

No. 7012

United States
Circuit Court of Appeals
For the Ninth Circuit.

LAKE UNION DRY DOCK & MACHINE WORKS,
Claimant and Appellant,

vs.

WILMINGTON BOAT WORKS, Inc., a corporation,
Libellant and Appellee,

THE BOAT "LUDDCO 41," her engines, tackle, apparel,
furniture, etc.,

Respondent,

Apostles on Appeal

Upon Appeal from the United States District Court for the Southern
District of California, Central Division.

FILED

NOV 28 1932

PAUL P. O'BRIEN,
CLERK

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For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words

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Names and Addresses of Proctors.

For Claimant and Appellant:

BRONSON, JONES & BRONSON, ESQS.,
Seattle, Washington.

McCUTCHEM, OLNEY, MANNON & GREENE,
ESQS.,
Roosevelt Building,
Los Angeles, California.

For Libelant and Appellee:

LLOYD S. NIX, ESQ.,
Title Insurance Building,
Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA CENTRAL
DIVISION—IN ADMIRALTY

| | |
|--|-----------------|
| WILMINGTON BOAT WORKS,) | |
| INC., a California corporation,) | |
| |) |
| |) Libelant,) |
| |) |
| |) No. 4539C |
| vs.) | |
| |) LIBEL IN REM |
| The Boat "LUDDCO 41", her en-) | |
| gines, tackle, apparel, furniture, etc.,) | |
| |) |
| |) Respondent.) |

COMES NOW the libelant, Wilmington Boat Works, Inc., a California corporation, and, by way of libel, against the Boat "LUDDCO 41", her engines, tackle, apparel, furniture, etc., and against all persons intervening for their interest in the said Boat "LUDDCO 41", in a cause of contract, civil and maritime, alleges as follows, to wit:

I.

That said Wilmington Boat Works, Inc., is, and was at all times herein mentioned, a corporation duly organized and existing under and by virtue of the laws of the State of California, with a principal place of business in the City of Los Angeles (Wilmington), County of Los Angeles, State of California.

II.

That the said Boat "LUDDCO 41" is a domestic vessel, and is now, or during the pendency of process herein will be, within the jurisdiction of this Honorable Court, and is now located at Wilmington, Harbor of Los Angeles, District aforesaid.

III.

That while the said Boat "LUDDCO 41" was in the port of Los Angeles, in the district aforesaid, between the 10th day of September, 1930, and the 27th day of September, 1930, both dates inclusive, the libellant, Wilmington Boat Works, Inc., a California corporation, furnished certain goods, wares, merchandise and materials and performed certain labor, at the special instance and request of the master, agent and owner thereof, and at the prices in that certain schedule, a copy of which schedule is attached hereto and marked Exhibit "A" and made a part hereof; that the charges in the said account amount to the sum of Seven Hundred Thirteen and $83/100$ Dollars (\$713.83) and that the said sum is just and reasonable, and that the said goods, wares, merchandise and materials furnished and labor performed were necessary and proper supplies for the said boat "LUDDCO 41" to make her intended voyage, or voyages, and were furnished on the credit of the said Boat "LUDDCO 41", her tackle, apparel, furniture, engines and equipment.

IV.

That it was necessary for the performance of the aforementioned work and labor to haul said Boat "LUDDCO 41" onto the marine ways at the yards of libellant, Wilmington Boat Works, Inc., and that said libellant did actually haul said Boat "LUDDCO 41" onto said marine ways on the 10th day of September, 1930; that the reasonable charge for the said hauling of the said vessel on said ways in the sum of Fifteen and $40/100$ Dollars (\$15.40).

V.

That it was necessary for the performance of the aforementioned work and labor for the said vessel to remain on

said ways for a period of eleven (11) days, and that the said vessel did remain on said ways for said period of days; and that the sum of Forty-two and 35/100 Dollars (\$42.35) is a reasonable charge for said lay days.

VI.

That the said goods, wares, merchandise and materials, hauling upon and use of said marine ways, so furnished, sold and delivered as aforesaid, and the said labor so performed, have gone into the said Boat "LUDDCO 41" and have become a part thereof; that the same amounts to the sum of Seven Hundred Thirteen and 83/100 Dollars (\$713.83); that, although demand has been made upon said vessel, her master, agent and owner, for the payment of the said sum, the said sum has not, nor has any part thereof, been paid and there now remains due, owing and unpaid to the libelant, Wilmington Boat Works, Inc., a California corporation, the sum of Seven Hundred Thirteen and 83/100 Dollars (\$713.83).

VII.

That the libelant is informed and believes and, therefore, alleges that the said Boat "LUDDCO 41" is under process from the state courts and libelant desires permission to file this libel.

VIII.

That the libelant is informed and believes and, therefore, alleges that the said Boat "LUDDCO 41" is, and was at all times herein mentioned, owned by the Yacht & Motor Sales Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of California, and having a principal place of business in Wilmington, City of Los Angeles, County of Los Angeles, State of California, district aforesaid; that on or about

the 1st day of November, 1930, a petition for involuntary bankruptcy was filed in the above entitled court against the said corporation, being case No. 15605-C, and one Harry Levinson was appointed receiver therein, and that libelant desires permission to file this libel.

IX.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libelant prays that process in due form of law, according to the course of this Honorable Court in cases of Admiralty and Maritime jurisdiction, may issue against the said Boat "LUDDOC 41", her tackle, apparel, furniture, engines, etc., and that all persons claiming any right, title or interest in said Boat "LUDDOC 41" may be cited to appear and answer upon oath all and singular the matters aforesaid; that this Honorable Court will be pleased to decree the payment of the amounts aforesaid, with interest, costs and attorney's fees; and that the said Boat "LUDDOC 41," her tackle, apparel, furniture, engines, etc., may be condemned and sold to pay the same; and that libelant may have such other and further relief as to the Court may seem just and equitable.

Lloyd S. Nix

LLOYD S. NIX

Proctor for Libelant.

GOOD CAUSE APPEARING, it is hereby ordered that the foregoing libel be filed, and monition issued.

April 27 1931

Geo. Cosgrave

Judge.

EXHIBIT "A"

T. S. Smith Phone Hugh M. Angelman
 President Wilmington 1390 Vice-President
 Wilmington Boat Works, Incorporated
 Naval Architects
 Designers and Builders of Power and Sailing
 Yachts: Marine Ways

Wilmington, Cal., Oct. 10, 1930

In Account With Boat "LUDDCO 41"
 Mr. Yacht & Motor Sales Corp. and owners
 Address Wilmington, Calif.

Terms: Net Cash. Interest will be charged after 30
 days.

1930

| | | |
|-------|--|----------------|
| Sept. | Making and installing new struts as per agreement | \$200 00 |
| Sept. | Statement attached | 513 83 |
| | | <hr/> \$713 83 |

P. O. #196

COPY

T. S. Smith Phone Hugh M. Angelman
 President Wilmington 1390 Vice-President
 Wilmington Boat Works, Incorporated
 Naval Architects
 Designers and Builders of Power and Sailing
 Yachts: Marine Ways

COPY Wilmington, Cal., Oct. 10, 1930

In Account With Boat "LUDDCO 41"
 Mr. Yacht & Motor Sales Corp. and Owners
 Address Wilmington, Calif.

Terms: Net cash. Interest will be charged after 30
 days.

1930

| | | |
|------|-------------------------------|-------|
| 9/10 | Ways Charges | 15 40 |
| 11 | 80—2½" #10 Br. F. H. Screws | 1 40 |
| | 2—1" Scoop Hull fittings | 2 80 |
| | 2—1" Service cocks | 2 50 |
| | 2—1" Swing check valves | 5 00 |
| | 4—1" Br. 45° Ells | 1 60 |
| | 2—1" Br. Ells | 70 |
| | 2—½" Br. Ells | 30 |
| | 2—½x1" Br. Bell Reducers | 56 |
| | 4—½" Clo. Br. Nipples | 36 |
| | 2—1" Sht. " " | 32 |
| | 2—1"x2½" " " | 40 |
| | 10'—1" Rubber Hose | 13 |
| | 4—1" Hose Clamps | 20 |
| | 4—5/16x1" Br. Cap Screws | 36 |
| | 4—5/16" Br. Nuts | 12 |
| | 6—¾" #8 Br. Screws | 04 |
| | ½#—5/16" Sheet brass | 20 |
| 12 | ½ Gal. Mab | 1 00 |
| | 1 " Distillate | 20 |
| | 1# Rags | 18 |
| | 9#—1" Br. Pipe | 3 15 |
| | 1—1" Br. Union | 80 |
| 17. | 2—1½x18 Tobin Br. Shafts 232# | 81 20 |
| | 2—1" Clo. Br. Nipples | 40 |
| | 2—1-7/16" Dodge Pillow Blocks | |
| | (#12266) | 3 40 |
| | 2—1-7/16" Dodge Flange | |
| | Couplings (12500) | 16 00 |
| 19 | 8# Bronze Castings (12277) | 3 60 |
| 25 | 8—3/8x1¼" Set Screws | 24 |

| | | | |
|------|--|------|------------|
| | 1—7/16x1½" “ “ | | 04 |
| | ½#—3/8" Sq. Flax Packing | | 20 |
| | ¼#—3/8" Steel Keystock | | 03 |
| | ¼#—3/8" Br. “ | | 09 |
| 26 | 4—3/8x2" Cap Screws | | 14 |
| | 1 Roll Tape | | 20 |
| | 22# Sierra Babbitt | 4 | 40 |
| | 8—½x2½" Cap Screws | | 64 |
| | 4—½" Hex Nuts | | 10 |
| | 8—½" Lock washers | | 04 |
| 27 | 1 Pc. 2x10-3' Oak | 1 | 75 |
| | 1 “ 2x6-2’ “ | | 70 |
| | 1½# Nails | | 12 |
| | 2 doz. 1½" #8 Bronze screws | | 22 |
| | 1 Pc. 1x4—4' O. Pine | m | 06 |
| | 2—5/8x5" Blk Iron bolts | | 36 |
| | 4—5/8" Steel hex nuts | | 12 |
| | | | <hr/> |
| | Fwd. | | \$151 77 |
| 1930 | | | “LUDCO 41” |
| 9/10 | Rouch—Mab topsides, scrub bot- tom, and clean waterline | (2½) | |
| | McLaughlin—Clean topsides and bottom | (2½) | |
| | Harrington EA—Mab topsides and remove oil | | ½ |
| 11 | Priess—Repair transom, caulking | | 2— |
| | Simpson—Install new water cool- ing lines, & sea cocks, etc | | 8— |
| 12 | Magee—Paint under blocks | (½) | |
| | Hagerman—Change sea cocks and etc. | | 1½ |

| | | |
|----|---|----|
| | Carlson RE—Plug water intake holes & cover with lead, trim planking | 2— |
| | Simpson—Renew water cooling lines, also remove old lines | 4½ |
| 15 | Marshall—Take out shafts | ½ |
| | Cloud—Take out prop. shafts | 1— |
| 16 | Gundy—Install new shafts | 2— |
| | Leuer—Machine propeller shaft bearing sleeves | 6— |
| | Cloud—Line shafts, melt babbitt out intermediate bearings | 3— |
| | Hagerman—Bore out shaft sleeves & measure up shafts | 1½ |
| 17 | Gundy—Install new shafts | 1— |
| | Leuer—Machine propeller shaft sleeves | 8— |
| 18 | Bertolet—Bore & face couplings | 4— |
| | Carlson Hal—Make pattern for propeller nut | 1— |
| | Leuer—Machine propeller shaft and sleeves | 8— |
| | Hagerman—Check up shafts and couplings, etc | 2— |
| 19 | Bertolet—Cut off face and center & drill intermediate shafts | 3— |
| | Hagerman—Shrinking on sleeves on shafts | 2— |
| | Leuer—Machine propeller shafts and nuts | 8— |
| | Simpson—Clean propeller blades | 1½ |

| | | |
|----|---|-------------|
| 20 | Markey—Straighten shafts shrink on bushings | 4½ |
| | Hagerman—Put on bushing & check up shaft | 4½ |
| | Leuer—Machine prop. shafts | 8— |
| | Bertolet—Drill and tap flanges straighten shafts | 2— |
| 22 | Hagerman—Straighten shafts, etc | 3— |
| | Leuer—Machine propeller shafts | 7— |
| | Markey—Straighten shafts, etc | 5— |
| | Fwd. | (5½) ½ 104½ |

T. S. Smith Phone Hugh M. Angelman
 President Wilmington 1390 Vice-President
 Wilmington Boat Works, Incorporated
 Naval Architects
 Designers and Builders of Power and Sailing
 Yachts: Marine Ways

-2- Wilmington, Cal., Oct. 10, 1930

In Account With Boat "LUDDCO 41"

Mr. Yacht & Motor Sales Corp. and Owners

Address Wilmington, California.

Terms: Net cash. Interest will be charged after 30 days.

1930

| | | |
|-------|---|----------|
| Sept. | Forward: | \$151 77 |
| | 1—2" Goodrich Cutlass Bearing (#12482) | 24 83 |
| | Lay days 11 da. | 42.35 |
| | | <hr/> |
| | | \$218 95 |

Labor :—

| | | |
|----------------|--------|-------------|
| 5½ Hrs. @ 1.00 | 5.50 | |
| 5½ “ @ 1.25 | 6.88 | |
| 187 “ @ 1.50 | 280.50 | |
| 1 “ @ 2.00 | 2.00 | 294 88 |
| | | <hr/> |
| | | \$513 83 |
| | | <hr/> <hr/> |

COPY

P. O. #189

| | | |
|------|---|-------------|
| 1930 | | “LUDDCO 41” |
| | Forward: | (5½) ½ 104½ |
| 9/22 | Bach—floor board and linoleum. | ½ |
| 23 | Bach—floor board in cabin to get at shaft. | ½ |
| | Leuer—machine propeller shafts. | 8— |
| | Bertolet—bore and turn bearing sleeve, bore and turn face spacer for intermediate flanges, assemble for propeller shafts and bearing sleeves. | 6— |
| 22 | Bertolet—cut keyway, fit keys, drill and fit flanges. | 5— |
| 24 | Leuer—machine and assemble propeller shaft. | 8— |
| | Bertolet—assemble shaft on boat. | ½ |
| 25 | Leuer—machine work on propeller shaft fittings and install | 8— |
| | Hagerman—babbit shafts, check alignments, etc. | 2— |

| | | |
|----|---|----|
| | Bertolet—assemble propeller shaft and intermediate, babbitt stern bearings and fit propeller. | 8— |
| | Markey—install shafts, line up and babbitt bearings, connect up couplings and line motors. | 7— |
| | Foster—letter name and number on each side of bow. | 1 |
| 26 | Hagerman—line up shafts and check up, straighten and re-face couplings | 3½ |
| | Marshall—line up shafts, try out. | 5— |
| | Markey—test shafts, pull same, straighten and install same. | 7— |
| | Besinger—take out intermediate shaft. | 2½ |
| 27 | Bach—bearings on shaft, and linoleum. | 8— |
| | Markey—install steady bearings on shafts, adjust and test same | 5½ |
| | Hagerman—bore out intermediate bearings and line up shafts. | 2½ |

(5½) 5½ 187—1

Verified.

[Endorsed]: Filed Apr 28 1931 R S Zimmerman
R. S. Zimmerman, Clerk

[TITLE OF COURT AND CAUSE.]

STIPULATION

IT IS HEREBY STIPULATED by and between Lloyd S. Nix, proctor for the libelant, Wilmington Boat Works, Inc., a California corporation, and M. S. Meyberg, proctor for Fred N. Schneringer, Trustee for the Yacht & Motor Sales Corporation, Bankrupt, and George W. Nix, proctor for the Lake Union Drydock Company, a corporation, that the keeper of the United States Marshal now on said Boat "LUDDCO 41" may be released and the said boat delivered to the libelant, Wilmington Boat Works, Inc., and that the said Wilmington Boat Works, Inc., will hold the same subject to the disposition of this cause and orders of the above entitled court, and the said libelant does hereby agree to hold the said boat for the said United States Marshal without costs; and it is further stipulated that the delivery of the said boat to the said Wilmington Boat Works, Inc., does not in any way, shape or form affect any rights to the said Boat "LUDDCO 41" or in the above entitled cause now existing.

Dated, this 28th day of May, 1931.

Lloyd S. Nix
LLOYD S. NIX,

Proctor for Libelant, Wilmington Boat Works, Inc.

M. S. Meyberg
M. S. MEYBERG,

Proctor for Fred N. Schneringer, Trustee for
Yacht & Motor Sales Corporation, Bankrupt.

G. W. Nix
GEORGE W. NIX,

Proctor for Lake Union Drydock Company, a corporation.

[Endorsed]: Filed May 28 1931 R. S. Zimmerman,
Clerk By Thomas Madden Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES IN THE SOUTHERN DISTRICT OF
CALIFORNIA CENTRAL DIVISION—
IN ADMIRALTY

| | |
|-------------------------------------|--------------|
| Wilmington Boat Works, Inc., a) | |
| California Corporation) | |
| Libelant) | |
|) | |
| -vs-) | |
|) | STIPULATION |
| The Boat "Luddco 41" her engines,) | FOR COSTS OF |
| tackle, apparel, furniture, etc.,) | CLAIMANT |
| Respondent) | |
|) | |
| Lake Union Dry Dock and Machine) | |
| works,) | |
| Claimant) | |

STIPULATION ENTERED INTO PURSUANT TO
THE RULES AND PRACTICE OF THIS COURT

WHEREAS, the above named Libelant has filed or is about to file in the above entitled court a libel against the Boat "Luddco 41", and

WHEREAS, the above named Claimant has filed or is about to file in the above entitled court a claim of ownership to said respondent Boat "Luddco 41",

NOW, THEREFORE, the undersigned INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, a corporation of the State of Pennsylvania and authorized to transact a general surety business, as surety, submitting itself to the jurisdiction of the said court, does hereby acknowledge itself bound unto whom it may concern in the sum of TWO HUNDRED AND FIFTY (\$250.00)

[TITLE OF COURT AND CAUSE.]

UNDERTAKING FOR RELEASE IN LIBEL

KNOW ALL MEN BY THESE PRESENTS, that Lake Union Dry Dock and Machine Works, as Principal, and Indemnity Insurance Company of North America, a corporation, incorporated under the laws of the State of Pennsylvania, authorized to transact a surety business within the State of California, as surety, are held and firmly bound unto A. C. Sittel, as United States Marshal, in the full penal sum of Fifteen Hundred (\$1500.00) Dollars, to be paid to the said A. C. Sittel as such United States Marshal, for the payment of which well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Signed, sealed and delivered this 14th day of July, 1931.

WHEREAS, libel has been filed in rem in the above entitled Court on the day of 1931, by Wilmington Boat Works, Inc., as Libelant, against the Boat "Luddeco 41", her engines, tackle, apparel, furniture, etc., and the owners thereof, as Respondent,

WHEREAS the said Boat now lies seized and attached in the custody of said Marshal by virtue of process issued upon said libel,

WHEREAS, said Lake Union Dry Dock and Machine Works, Claimant, is filing in the above entitled cause claim of ownership to said respondent Boat, together with stipulation for costs, and is applying for release of said respondent Boat from such seizure and attachment all in accordance with the admiralty rules and practice of the above entitled court.

Co. of North America thereto as principal, and his own name, as Attorney-in-fact.

(SEAL)

F. D. LANCTOT

Notary Public in and for the County of Los Angeles
State of California.

I hereby approve the foregoing bond. Dated the 16
day of July 1931

HOLLZER

Judge

[Endorsed]: Filed Jul 16 1931 R. S. Zimmerman
Clerk By Edmund L. Smith, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

STIPULATION FOR COSTS ON APPEAL

KNOW ALL MEN BY THE PRESENTS: That we, LAKE UNION DRY DOCK & MACHINE WORKS, a corporation organized and existing under and by virtue of the laws of the State of Washington, with principal place of business at 1515 Fairview Avenue North, in the City of Seattle, said State, claimant in the above entitled proceeding, and Indemnity Insurance Company of North America, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania authorized to do and doing a general bonding and surety business in the County of Los Angeles, State of California, with a place of business at 724 South Spring Street, said City and County of Los Angeles, said State of California, stipulator for value, on stipulation for release of respondent Boat "LUDDCO 41", her engines, etc., in the above entitled proceeding, as principals, and NATIONAL SURETY COMPANY, a corporation or-

ganized and existing under and by virtue of the laws of the State of New York, with a place of business at Union Bank Building, City and County of Los Angeles, State of California, authorized to do, and doing a general bonding and surety business in said City and County of Los Angeles, and said State of California, as surety, are held and firmly bound unto Wilmington Boat Works, Inc., a corporation, libelant in the above entitled proceeding, and unto whom it may concern, in the sum of Two Hundred and Fifty Dollars (\$250.00), to be paid to said Wilmington Boat Works, Inc., its successors or assigns, or to whom it may concern, for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our successors and assigns, jointly and severally, firmly by these presents.

SEALED with our seals and dated this 13th day of September, 1932.

WHEREAS, Lake Union Dry Dock & Machine Works, a corporation, claimant, and Indemnity Insurance Company of North America, a corporation, as stipulator for value on release of respondent vessel "LUDDCO 41", her engines, etc., as appellants, have prosecuted, or are about to prosecute an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from a decree of the District Court of the United States for the Southern District of California, Central Division, in Admiralty, bearing date of August 25, 1932, in the above entitled proceeding, wherein Wilmington Boat Works, Inc., a corporation, is libelant, and The Boat "LUDDCO 41", her engines, tackle, apparel, furniture, etc., is respondent, Lake Union Dry Dock & Machine Works, a corporation, is claimant

and Indemnity Insurance Company of North America, a corporation, is stipulator for value;

NOW, THEREFORE, the condition of this obligation is such that if the above named appellants and principals, Lake Union Dry Dock & Machine Works, a corporation, and/or Indemnity Insurance Company of North America, a corporation, shall prosecute said appeal with effect, and pay all costs which may be awarded against them, or either of them, as such appellants, if the appeal is not sustained, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

LAKE UNION DRY DOCK & MACHINE
WORKS

By H. B. JONES, Secy.

INDEMNITY INSURANCE COMPANY OF
NORTH AMERICA

By C. F. Batchelder

(C. F. Batchelder) (SEAL)

Attorney in Fact
PRINCIPALS

NATIONAL SURETY COMPANY

By J. H. Lobdell (SEAL)

Attorney in Fact
SURETY

STATE OF WASHINGTON)
: SS
COUNTY OF KING)

On this 13th day of September, 1932, before me personally appeared H. B. JONES, to me known to be the Secretary of LAKE UNION DRY DOCK & MACHINE WORKS, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said

STATE OF WASHINGTON)
) SS
 COUNTY OF KING)

J. H. LOBDELL, being first duly sworn, on oath deposes and says: That he is attorney-in-fact for NATIONAL SURETY COMPANY and authorized, as resident agent of said company at the City of Seattle, Washington, to execute undertakings for and on behalf of said company, and as such authorized agent and attorney-in-fact makes this verification for and on behalf of said company; and acknowledges the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath states that he is authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

J. H. LOBDELL

Subscribed and sworn to before me this 13th day of September, 1932.

(SEAL)

R. L. McDONALD

Notary Public in and for the State of Washington,
 residing at Seattle

The foregoing bond is hereby approved as to surety and form; and notice of filing same, together with notice of name and address of surety on said bond, is hereby waived this 19 day of October, 1932.

LLOYD S. NIX

Proctor for Libelant

[Endorsed]: Filed Oct 28 1932 R. S. Zimmerman,
 Clerk By Edmund L. Smith, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

APPEAL BOND FOR COSTS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, THE FIDELITY AND CASUALTY COMPANY OF NEW YORK, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and duly licensed to transact its business in the State of California, as surety is held and firmly bound unto the National City Bank of New York, a Corporation, in the full and just sum of Two Hundred Fifty Dollars (\$250.00), to be paid to the said National City Bank of New York, a corporation, its successors or assigns, to which payment well and truly to be made, the undersigned binds itself, its successors and assigns by these presents.

Signed and Dated this 15th day of November, A. D. 1932.

Whereas, lately at a regular term of the District Court of the United States for the Southern District of California, Southern Division, sitting at the City of Los Angeles, in said District, in a suit pending in said Court between National City Bank of New York, a corporation, as plaintiff, and the Continental National Bank, a corporation, et al, as defendants, Cause No. 2555-J, on the law docket of the said Court, Final judgment was rendered against the said defendants for the sum of Twenty-four Thousand Dollars (\$24,000.00), together with legal interest, which judgment was entered on the 6th day of September, 1932, and the said defendants have obtained an appeal to reverse the judgment of said Court in the aforesaid suit, and a citation directed to the said plaintiff citing and admonishing it to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit to be holden in the City of San Francisco, State of California, on the day of, A. D. 1932.

half of the Corporation therein named and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the County of Los Angeles the day and year in this certificate first above written.

(SEAL) DOROTHY PANKHURST
Notary Public in and for the County of Los Angeles
State of California.

[Endorsed]: Filed Nov 16 1932 R. S. Zimmerman,
Clerk By J. M. Horn, Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION—IN ADMIRALTY.

| | | |
|--|---|--------------|
| WILMINGTON BOAT WORKS,) |) | |
| INC., a California corporation,) |) | |
| |) | |
| Libelant,) |) | |
| |) | |
| vs.) |) | |
| |) | No. 45-39-C |
| THE BOAT "LUDDCO 41", her) |) | |
| Engines, Tackle, Apparel, Furniture,) |) | ANSWER TO |
| etc.) |) | LIBEL IN REM |
| |) | AND CLAIM. |
| Respondent.) |) | |
| LAKE UNION DRY DOCK &) |) | |
| MACHINE WORKS, a corpora-) |) | |
| tion,) |) | |
| |) | |
| Claimant.) |) | |

Comes now Lake Union Dry Dock & Machine Works, a corporation duly organized and incorporated under and by virtue of the laws of the State of Washington, and makes answer for and on behalf of the respondent

“LUDDCO 41,” her engines, tackle, apparel, furniture, etc., and for answer to libel filed herein upon an alleged contract civil and maritime, and as claimant, respectfully shows:

I.

Answering Article III of the libel, respondent and claimant, not having information relative to the allegations of Article III of said libel, sufficient to enable it to answer the same, and basing its denial upon that ground, denies that between the 10th day of September, 1930 and the 27th day of September, 1930, or at any other time or at all, the libelant, or any other person, furnished certain or any goods, wares and merchandise, or materials, or performed certain or any labor at the special instance or request of the master or agent thereof; or at the prices in that certain schedule attached to the libel marked exhibit “A”, or made a part thereof, or at any other prices, or that the charges in the said account, or any account, amount to the sum of \$713.83, or any other sum or amount, or that the said sum or any sum is just or reasonable, or that the said goods or wares or merchandise or materials furnished or labor performed were necessary or proper supplies for the said boat “Luddco 41” to make her intended or any voyage or voyages, or were furnished on the credit of said boat “Luddco 41”, her tackle, apparel, furniture, engines or equipment. Denies that libelant performed any labor or furnished any goods, wares, merchandise or materials whatever at the special instance or request of the owner. Denies that the sum alleged by libelant is just or reasonable; denies that any goods, wares, merchandise or materials furnished or labor performed were necessary or proper supplies for the said

boat "Luddco 41" to make her intended voyage or voyages or otherwise. Denies that said boat intended to make any voyage or voyages. Denies that libelant furnished any goods, wares, merchandise or materials, or performed any labor, upon the credit of the said boat "Luddco 41", her tackle, apparel, furniture, engines and equipment. Alleges on the contrary that all of said facts were well known at all times to the libelant.

II.

Answering Article IV of said libel, respondent and claimant has not sufficient information and belief upon which to base its answer, and placing its answer upon that ground denies each and every allegation in Article IV contained, the same as though herein specifically denied at length. Denies that the reasonable charge for hauling of the said vessel on the ways, as in said libel set forth, is the sum of \$15.40.

III.

Answering Article V of said libel, respondent and claimant has not sufficient information and belief upon which to base its answer, and placing its answer upon that ground denies each and every allegation in Article V contained, the same as though herein specifically set forth at length. Denies that the sum of \$42.35 is a reasonable charge for eleven lay-days. Denies that said lay-days were necessary.

IV.

Answering Article VI of said libel, this respondent and claimant has not sufficient information and belief relative to the allegations therein contained to enable it to answer the same, and basing its answer upon that ground denies

each and every allegation in Article VI contained, the same as though herein specifically set forth at length.

Denies that the said or any wares, goods, merchandise or materials, hauling upon and use of said marine ways, alleged to have been furnished, sold or delivered as aforesaid, or said or any labor so alleged to have been performed, if any, did go into the said boat "Luddco 41", or have become a part thereof, or that the same or any part thereof amounts to \$713.83, or any other sum or amount; denies that demand has been made upon said vessel, her master, agent or owner, for the payment of said sum, or any sum; denies that there now remains due, owing or unpaid to the libelant the said sum of \$713.83, or any other amount wjatever.

V.

Answering Article VII, this respondent and claimant has no information or belief upon which to base their denial, and placing their denial upon that ground, denies that the said boat "Luddco 41" is under process from the state courts.

VI.

Answering paragraph VIII, this respondent and claimant denies that the said boat "Luddco 41" is and was at all times herein mentioned owned by the Yacht & Motor Sales Corporation, a corporation, or any other firm, person or corporation other than claimant herein. Alleges that said boat is and was at all times herein mentioned the sole property of this claimant. Alleges that all of said facts were at all times herein mentioned well known to libelant.

VII.

Answering Article IX, respondent and claimant denies that the premises set out in said libel are true or within

the admiralty or maritime jurisdiction of the United States or of this Honorable Court.

WHEREFORE, respondent and claimant pray this Honorable Court that the libel herein be dismissed with costs.

L. J. Meyberg

Proctor for Respondent and Claimant.

STIPULATION having been entered into, it is hereby ordered that the foregoing answer and claim is allowed to be filed.

Dated July 16th 1931.

Hollzer

Judge U. S. District Court.

Verified.

[Endorsed]: Filed Jul 16 1931 R. S. Zimmerman,
Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

INTERROGATORIES ATTACHED TO RESPOND-
ENT AND CLAIMANT LAKE UNION DRY
DOCK & MACHINE WORKS' ANSWER TO
LIBELANT'S LIBEL.

Comes now Lake Union Dry Dock & Machine Works, a corporation, and attaches interrogatories to its answer for and on behalf of itself and respondent herein to the libel of Wilmington Boat Works, Inc., Libelant, on file herein, and demands that the said Libelant answer the said interrogatories in a full, explicit and distinct manner as required by the General Average Laws:

First Interrogatory.

When was the labor claimed under this libel performed, and when were the goods, wares, merchandise and ma-

terials, claimed under this libel, furnished? And where was the boat at that time?

Second Interrogatory.

Who ordered the said work, and at whose special instance and request was each item of goods, wares, merchandise, material and labor furnished and performed?

Third Interrogatory.

Who was the master at the time, who the agent, and who the owner?

Fourth Interrogatory.

Was any arrangement made for price before the work was done, or was any quotation whatever given? If so, was this in writing, and to whom?

Fifth Interrogatory.

Was any statement or bill ever sent for this work, and if so, to whom? What, if anything, was done at any time toward finding out who the owner of this boat was, and what was the result thereof?

Sixth Interrogatory.

Give the names of each person who performed any labor.

Seventh Interrogatory.

Was any contract entered into? If so, was it oral or written; and what were the terms thereof, and with whom?

Eighth Interrogatory.

When did libelant find out who was the owner?

Ninth Interrogatory.

Under what process of court, and what information with reference thereto, and from whom and to what do you refer by paragraph VII of your libel?

Tenth Interrogatory.

Who informed you, and when, if at all, that the Yacht & Motor Sales Corporation was the owner of "Luddco 41"?

Eleventh Interrogatory.

Upon whom did you make demand, set forth in your paragraph VI, for payment against the vessel? For whom as her master? For whom as her agent? For whom as her owner?

Twelfth Interrogatory.

Why were the goods, wares, merchandise and materials furnished and labor performed necessary for the said boat "Luddco 41" to make her intended voyage or voyages, as set forth in your paragraph III? What intended voyage or voyages do you refer to in said paragraph III? Please state in detail.

Thirteenth Interrogatory.

Is it not a fact that whatever goods, wares, merchandise or materials you furnished, and whatever labor you performed, were furnished and performed solely upon the credit of Yacht & Motor Sales Corporation, at their instance and request, and not at the instance of the master, owner or agent?

Fourteenth Interrogatory.

Did you not know that the boat "Luddco 41" was for sale, and did not intend to make any voyage or voyages, and that it had never made any voyage or voyages? If your answer should be other than "No," please state what voyage or voyages it ever made, or ever intended to make, to your knowledge.

Fifteenth Interrogatory.

Do you know whether or not the boat was registered at the time any goods, wares, merchandise or materials were furnished, or labor performed?

Sixteenth Interrogatory.

What, if anything, did you do to ascertain who was the owner, or who was the master, or who was the agent, of the said boat, and when was this done?

Seventeenth Interrogatory.

State whether or not any of the charges mentioned in your exhibit "A" are other than your regular and reasonable charges for the items mentioned? If not, state in what way they differ therefrom in each instance.

LAKE UNION DRY DOCK AND
MACHINE WORKS

By L J Meyberg

Proctor

[Endorsed]: Filed Jul 16 1931 R. S. Zimmerman,
Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ANSWERS TO INTERROGATORIES

The answer of the WILMINGTON BOAT WORKS, INC., a California corporation, to the interrogatories propounded to it in this cause by respondent and claimant, LAKE UNION DRY DOCK & MACHINE WORKS:

To the First Interrogatory. The labor commenced about the tenth day of September, 1930 to and including the twenty-seventh day of September. The boat at that time was delivered at our yard.

To the Second Interrogatory. The said work was ordered by a representative of the Yacht & Motor Sales Corporation.

To the Third Interrogatory. The Yacht & Motor Sales Corporation was the agent at the time, and the supposed owner.

To the Fourth Interrogatory. An agreed price was made for a portion of the work as evidenced by their Order Number 196 for installing of struts, lining shafts, and installing bronze propeller shaft. The amount agreed upon was Two Hundred Dollars (\$200.00). The balance of the work was done by time and material.

To the Fifth Interrogatory. A Statement of the complete work was sent to the Yacht & Motor Sales Corporation. We knew that the boat was in the possession of the Yacht & Motor Sales Corporation and by their actions they held themselves out to be the owner of the said boat.

To the Sixth Interrogatory. Rouch; McLaughlin; Harrington EA; Priess; Simpson; Magee; Hageman RE Carlson; Marshall; Cloud; Gundy; Leuer; Bertolet; Hal Carlson; Markey; Bach; Foster; Besinger; Ray Carlson; Bendiksen;

To the Seventh Interrogatory. The same as answer to the Fourth Interrogatory.

To the Eighth Interrogatory. The exact date is unknown, but subsequent to the filing of the libel in action.

To the Ninth Interrogatory.
Information received from Victor R. Hansen, Attorney at Law, Los Angeles, California.

To the Tenth Interrogatory. We were never informed by them that they were the owner, but as they were selling boats of this character and we were in the habit of per-

forming work on any and all boats they sent to us, we had no reason to question their ownership and their authority to have the work done.

To the Eleventh Interrogatory. The bills were rendered as customary to the Yacht & Motor Sales Corporation, and payment was demanded from time to time.

To the Twelfth Interrogatory. The work was performed at the request of the Yacht & Motor Sales Corporation on their statement that they had a customer for the boat, and they wished this work to be done so that they might make a sale.

To the Thirteenth Interrogatory. No, our work is always done at the credit of the boat.

To the Fourteenth Interrogatory. Yes, the "LUDDCO 41" was for sale, and was operating in the harbor.

To the Fifteenth Interrogatory. We do not know, as we have never questioned such matters when boats were sent to us by the Yacht & Motor Sales Corporation.

To the Sixteenth Interrogatory. We do not know, as we have never questioned such matters when boats were sent to us by the Yacht & Motor Sales Corporation.

To the Seventeenth Interrogatory. All charges made are reasonable and regular.

WILMINGTON BOAT WORKS, INC.

By T. S. Smith

President,

Libellant.

Verified.

[Endorsed]: Received copy of the within this 5th day of Aug 1931 L. J. Meyberg A Proctor for Libellant Filed Aug 5 1931 R. S. Zimmerman, Clerk By Thomas Madden Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ORDER OF REFERENCE

Pursuant to stipulation of the respective parties hereto, by and through their proctors,

IT IS ORDERED that the above entitled matter be, and the same is hereby, referred to United States Commissioner David B. Head for hearing and report.

Dated this 23 day of March, 1932.

Geo Cosgrave

United States District Judge.

[Endorsed]: Filed Mar 23 1932 R. S. Zimmerman,
Clerk By Theodore Hocke Deputy Clerk

[TITLE OF COURT AND CAUSE.]

COMMISSIONERS REPORT

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

The undersigned, DAVID B. HEAD, to whom the above entitled cause was referred for hearing, submits his report:

The action is in rem by the furnisher of material and labor against the Boat "Luddco 41". Answers were filed by the receiver for the Yacht and Motor Sales Corporation, a bankrupt, as respondent and by the Lake Union Dry Dock and Machine Works, a Washington Corporation, as claimant. The cause was set down for the taking of testimony and on April 7, 1932 there appeared for the libelant Loyd S. Nix, Esq. of Los Angeles and for the claimant Robert E. Bronson, Esq. of Seattle, Washington.

There was no appearance for the receiver for the Yacht and Motor Sales Corporation. The claimant denies that the labor and materials furnished were of the value alleged but principally relies upon the defense that the orders for materials and labor were not given by any person authorized to create a lien against the vessel. From the evidence the following facts are found:

1. That the respondent vessel "Luddco 41" was owned by the claimant, Lake Union Dry Dock and Machine Works, at all times during the period covered by this Libel.

2. That prior to September 10, 1930 the claimant shipped the respondent vessel to the Yacht and Motor Sales Corporation at Los Angeles Harbor as consignees for the purpose of sale; that it was agreed between the claimant and the Yacht and Motor Sales Corporation that the care and upkeep of the vessel was to be at the expense of the Yacht and Motor Sales Corporation.

3. That certain defects became apparent in the vessel which affected its salability and to correct these defects the Yacht and Motor Sales Corporation ordered the libelant to make certain repairs and alterations in the vessel.

4. That pursuant to said order the libelants between September 10, 1930 and September 27, 1930 made certain repairs and alterations on the respondent vessel; that the reasonable value of the materials furnished and labor performed is in the amount of \$713.83, no part of which has been paid.

5. That the libelant had no knowledge of the agreement between the Yacht and Motor Sales Corporation referred to in paragraph two above.

CONCLUSIONS OF LAW:

Subsection Q of the Ship Mortgage Act (Title 46 U. S. Code, Sec. 972) provides "The following persons shall be presumed to have authority from the owner to procure repairs - - - the managing owner, ship's husband, master or any person to whom the management of the vessel at the port of supply is entrusted." There is no question but that the Yacht and Motor Sales Corporation came within this classification and that the furnishing of repairs upon its order raised the presumption of a lien.

Subsection R of the Act provides that no lien is created under Subsection Q "when the furnisher knew or by the exercise of the reasonable diligence could have ascertained" that the person ordering the repairs was without authority to create a lien.

From the circumstances of the transaction it is concluded that there was nothing which should have put the libelant on inquiry. The libelant was acting with reasonable diligence although no inquiry was made. *Morse Dry Dock and Repair Co. vs. United States* 298 Fed. 153.

Going further there is no evidence of a specific agreement between the claimant and the Yacht and Motor Sales Corporation that the latter could create no liens. The agreement between the parties as to which was to bear the expense of repairs did not exclude the usual authority possessed by a person in possession of a vessel to use the credit of the vessel for its benefit. The agreement between the owner and the person in possession under charter or contract fixes their respective rights and obligations but is not binding upon third parties. *The Portland*, 273 Fed. 401. *The Anna E. Morse* 286 Fed. 794.

It is concluded that the libelant has a good and valid lien against the respondent vessel.

RECOMMENDATION:

That a decree be entered in accordance with this report finding that the libelant has a good and valid lien against the respondent vessel in the amount of \$713.83 together with interest and the costs of this suit and that process issue for the sale of the respondent vessel in accordance with the rules.

Respectfully submitted,

David B. Head.

[Endorsed]: Filed May 23 1932 R. S. Zimmerman,
Clerk By C A Simmons Deputy Clerk

[TITLE OF COURT AND CAUSE.]

EXCEPTIONS OF CLAIMANT LAKE UNION DRY
DOCK & MACHINE WORKS, TO COMMIS-
SIONER'S REPORT.

TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF CALIFOR-
NIA, CENTRAL DIVISION:

Comes now claimant, Lake Union Dry Dock & Ma-
chine Works, a corporation, and excepts to the report of
Honorable David B. Head, United States Commissioner
in the above entitled proceeding, in the following respects
and particulars.

I.

Excepts to finding of fact number 5, and the whole
thereof, upon the ground and for the reason that the same
is wholly irrelevant and immaterial.

Further excepting to said report, claimant excepts to the Honorable Commissioner's conclusion of law in the following respects and particulars:

I.

Excepts to the following conclusion contained in the first paragraph, under heading of Conclusions of Law:

"There is no question but that the Yacht and Motor Sales Company came within this classification and that the furnishing of repairs upon its order raised the presumption of a lien,"

[Written at Bottom of page 1: (Document referred to in affidavit of Robert E. Bronson. R. E. B.)]
upon the ground that said conclusion is erroneous and not according to law.

II.

Excepts to the following conclusion contained in the third paragraph, under heading of Conclusions of Law, viz:

"From the circumstances of the transaction, it is concluded that there was nothing which should have put the libelant on inquiry. The libelant was acting with reasonable diligence, although no inquiry was made,"
upon the grounds and for the reason that said conclusions are contrary to the evidence, erroneous and contrary to law.

III.

Excepts to the following conclusions contained in the 4th paragraph, under the heading of Conclusions of Law, viz:

"Going further there is no evidence of a specific agreement between the claimant and the Yacht and Motor Sales Corporation that the latter could create no liens. The agreement between the parties as to which was to bear

the expense of repairs did not exclude the usual authority possessed by a person in possession of a vessel to use the credit of the vessel for its benefit. The agreement between the owner and the person in possession under charter or contract fixes their respective rights and obligations but is not binding upon third parties,"

upon the ground and for the reason that said conclusions are contrary to the evidence, erroneous and not according to law.

IV.

Excepts to the last paragraph, under the heading of Conclusions of Law, viz :

"It is concluded that the libelant has a good and valid lien against the respondent vessel,"

upon the grounds and for the reason that said conclusion is not supported by the evidence, is erroneous and not according to law.

Further excepting to said report, claimant excepts to the Honorable Commissioner's recommendation and the whole thereof, reading as follows:

"That a decree be entered in accordance with this report finding that the libelant has a good and valid lien against the respondent vessel in the amount of \$713.83, together with interest and the costs of this suit, and that process issue for the sale of the respondent vessel in accordance with the rules,"

upon the ground that said recommendation is not supported by the evidence, is erroneous and not according to law.

Further excepting to said report, claimant excepts to the failure and refusal of the Honorable Commissioner to find in part the following facts established by the evidence without contradiction:

I.

“That it was agreed that prior to September 10th, 1930, the claimant shipped respondent vessel to the Yacht and Motor Sales Corporation at Los Angeles Harbor, as consignee, for the sole purpose of sale; that it was agreed between the claimant and the said Yacht and Motor Sales Corporation as a part of said consignment agreement that the said Yacht and Motor Sales Corporation was to attend to the care and upkeep of said vessel at its own plant and at its own expense; that it was not contemplated by the said claimant and the said Yacht and Motor Sales Corporation that any repairs or alterations were to be made to said respondent vessel other than care and normal upkeep, and that it was expressly understood and agreed by the said defendants that said Yacht and Motor Sales Corporation had no authority to permit any liens to be incurred against said respondent vessel; that no reason is disclosed by the evidence why this lack of authority could not or would not have been made known to libelant in response to simple inquiry.”

II.

“That the work and repairs performed on said respondent vessel and the material furnished thereto was all without the knowledge or consent of the claimant, until after the completion thereof; that libelant looked solely to said Yacht and Motor Sales Corporation for payment of said labor, repairs and material until after the insolvency proceedings instituted against said Yacht and Motor Sales Corporation, and at no time intended to extend any credit to said respondent vessel.”

III.

“That libelant made no inquiry whatsoever as to the authority or lack of authority of the said Yacht and Motor Sales Corporation to permit any liens to be incurred against said respondent vessel; that the said Yacht and Motor Sales Corporation made no representations to libelant upon the subject of authority to permit liens to be incurred against said respondent vessel, and that from the evidence it must be concluded that inquiry by the libelant of said Yacht and Motor Sales Corporation would have disclosed that said Yacht and Motor Sales Corporation expressly had no authority to permit any liens to be incurred against said respondent vessel.”

Claimant further excepts to the report of the Honorable Commissioner herein in that the said Commissioner failed and refused to conclude as a matter of law and to return as a part of the conclusions of law in said report, among other things, the following:

I.

“That from the circumstances of the transaction between libelant and the said Yacht and Motor Sales Corporation, and from the uncontradicted evidence and the admissions of libelant in its answers to interrogatories, it is concluded that by reason of the express lack of authority of the Yacht and Motor Sales Corporation to permit any liens thereby created against respondent vessel, and by reason of the failure of libelant to use any diligence to ascertain this fact, and its failure to make any inquiry whatsoever, no lien was created against said respondent vessel in any respect in favor of said libelant, and it is concluded that libelant’s libel should be dismissed with costs to claimant.”

II.

Claimant further excepts to the report of the Honorable Commissioner herein in that he failed and refused to recommend that a decree be entered in accordance with correct and proper findings and conclusions, decreeing that no lien existed against said respondent vessel in favor of libellant, and that the said libel be dismissed with costs to claimant.

Bronson, Jones & Bronson
Proctors for Claimant.

[Endorsed]: Filed Jun 27 1932 R. S. Zimmerman.
Clerk By Francis E Cross Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ORDER OVERRULING EXCEPTIONS OF CLAIMANT LAKE UNION DRY DOCK & MACHINE WORKS, AND CONFIRMING COMMISSIONER'S REPORT.

This matter having come on regularly for hearing before the undersigned, one of the judges of the above entitled court, on....., the.....day of July, 1932, at the hour of.....o'clock.....M., libellant appearing and being represented by Mr. Lloyd S. Nix, its proctor, and claimant appearing and being represented by Mr. Harold A. Black of Messrs. McCutchen, Olney, Mannon & Greene, associate counsel for claimant, upon the exceptions of claimant, Lake Union Dry Dock & Machine Works, to the report and findings and conclusions and recommendations of Honorable David B. Head, United States Com-

missioner, filed herein upon the 23rd day of May, 1932, and the court being duly advised, and having fully considered the premises: now therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that claimant's exception number I to finding of fact number 5, claimant's exception Number I to first paragraph of the conclusions, claimant's exception number II to the third paragraph of the conclusions, claimant's exception number III to the fourth paragraph of the conclusions, claimant's exception number IV to the last paragraph of conclusions, claimant's exception to the Commissioner's recommendation, claimant's exception to the failure and refusal of the Commissioner to make findings number I, Number II and Number III, as set forth in claimant's exceptions to said report, and claimant's exception to the failure and refusal of said commissioner to recommend that a decree be entered in accordance with said proposed findings and conclusions decreeing that no lien existed against the respondent vessel LUDDCO 41, her engines, etc., be and each of said several respective exceptions is hereby overruled, to the overruling of each and all of which said exceptions claimant duly excepts, and said exceptions to said rulings may be and the same are hereby noted and allowed; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said report of said Honorable Commissioner in all respects be and the same is hereby confirmed, ratified and approved, and the findings and conclusions set forth in said report are hereby adopted and made the findings and conclusions of the Court herein, to all of which claimant duly excepts, and its exception is hereby duly noted and allowed.

DONE IN OPEN COURT this 25th day of August,
1932.

Geo Cosgrave
UNITED STATES DISTRICT JUDGE

Approved as to form as provided in Rule 44:

Bronson Jones & Bronson

McCutchen, Olney, Mannon & Greene

Proctors for Claimant.

[Endorsed]: Filed Aug 25 1932 R. S. Zimmerman,
Clerk By C A Simmons Deputy Clerk

[TITLE OF COURT AND CAUSE.]

FINAL DECREE

This matter having been heretofore referred to Hon. David B. Head, United States Commissioner, by general order of reference, entered herein on the 23rd day of March, 1932, for the taking of evidence, and the rendition to this court of Advisory Findings of Fact and Conclusions of Law and recommendations as to Decree, and the said Commissioner having heretofore, on the 23rd day of May, 1932, filed his Report herein, exceptions to said Report having been filed by claimant, and on consideration having been overruled, and the costs of the libelant having been taxed at the amount of Two Hundred Sixty Four and no/100 Dollars (\$264 00), now, on motion of Lyold S. Nix, proctor for libelant, it is

ORDERED that the libelant, Wilmington Boat Works, Inc., a corporation, do have, receive and recover of and from the boat "LUDDCO 41", her engines, etc. and its stipulators, the sum of Eight Hundred One and 50/100

Dollars (\$801.50), as recommended in the Report of said Commissioner, together with the sum of.....Dollars (\$.....), the costs of libelant as taxed, making in all the sum of.....Dollars (\$.....), with interest thereon until paid; and it is further

ORDERED that unless this Decree be satisfied, or an appeal taken therefrom within ten days after service of notice of entry of this Decree on the claimant, or its proctors, the stipulators for costs and value on the part of the claimant, and of said Boat "LUDDCO 41", her engines, etc., cause the engagements of their stipulations to be performed, or show cause within five days after said ten days, or on the first day of jurisdiction thereafter, why execution should not issue against them, their goods, chattels and lands, to satisfy this Decree; and it is further

ORDERED that the exception of claimant to the entry of the above Decree may be, and the same is hereby noted and allowed.

DONE IN OPEN COURT this 25th day of August, 1932.

Geo Cosgrave

UNITED STATES DISTRICT JUDGE

Approved as to form as provided in Rule 44:

Bronson, Jones & Bronson

McCutchen, Olney, Mannon & Greene

Proctors for Claimant

Decree entered and recorded Aug 25 1932 R. S. Zimmerman Clerk. By Francis E. Cross, Deputy Clerk.

Dock 8/25/32

Index 8/31/32

[Endorsed]: Filed Aug 25 1932 R. S. Zimmerman, Clerk. By Francis E. Cross Deputy Clerk

[TITLE OF COURT AND CAUSE.]

NOTICE OF ENTRY OF FINAL DECREE

To LAKE UNION DRY DOCK & MACHINE WORKS, a corporation, Claimant in the above entitled matter, and to BRONSON, JONES & BRONSON, and McCUTCHEN, OLNEY, MANNON & GREENE, its proctors:

NOTICE IS HEREBY GIVEN that on the 25th day of August, 1932, Final Decree was entered in the above entitled cause.

Dated, this 3rd day of September, 1932.

Lloyd S. Nix
LLOYD S. NIX,
Proctor for Libellant.

[Endorsed]: Received copy of the within notice this 7th day of September, 1932 McCutchen, Olney, Mannon & Greene Bronson, Jones & Bronson Proctors for claimant Filed Sep 8 1932 R. S. Zimmerman, Clerk By C W Simmons Deputy Clerk

[TITLE OF COURT AND CAUSE.]

REPORTER'S TRANSCRIPT OF ABSTRACT AND EXCERPTS OF TESTIMONY AT HEARING BEFORE SPECIAL MASTER.

LOS ANGELES, CALIFORNIA, APRIL 7, 1932,
2 O'CLOCK P. M.

---O---

(Discussion off the record between counsel.)

MR. NIX: It is stipulated that the boat was in the possession of The Yacht & Motor Sales Company.

MR. BRONSON: So stipulated.

MR. NIX: And that they delivered the boat to the Wilmington Boat Works.

MR. BRONSON: So stipulated.

(Discussion off the record between counsel.)

(Testimony of Harry C. Carlson)

HARRY C. CARLSON,

called as a witness on behalf of the Libelant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By M. NIX:

Q Mr. Carlson, with reference to Libelant's Exhibit No. 1, I will show you, or read to you, it says: "Making and installing new struts, per agreement." What did you do to install new struts and who ordered the new struts, and who ordered the work to be done?

A The Yacht & Motor Sales.

Q And who brought the boat to you?

A The Yacht & Motor Sales.

Q And who brought the boat to you?

A Their engineer.

Q What was his name?

A Mr. Offutt.

Q Did you have a conversation with Mr. Wilson, of the Yacht & Motor Sales?

A Yes, sir.

Q Who was present at that conversation?

A Mr. Offutt and Mr. Wilson.

Q And that was before any work was done?

A Yes, sir.

Q What was your conversation with reference to that particular work, in installing the new struts?

MR. BRONSON: What conversation is this, the first or second; you mentioned two conversations?

A Mr. Offutt brought the boat up there and he said, "We are going to install new struts on it" and then he brought Mr. Wilson.

(Testimony of Harry C. Carlson)

MR. NIX: Q Before any work was done?

A Yes, sir.

Q Then what did you do?

A We took the old struts off, and we had a pattern of some struts which we had put on a similar boat before for a man, which we decided to use on this boat. When we got those struts off, the prospect they had for buying this boat objected to the steel shafts that were in this boat, and it was decided to take those steel shafts out, which had nothing to do with the strut job.

Q Who requested you to do that?

A The Yacht & Motor Sales Company.

Q All right.

A There were two shafts,—no, one shaft. This prospective buyer wanted bronze shafts, and there was nothing said about the price, or anything else. We were given an order for doing this work, besides the strut job. The only thing we agreed upon the price was the strut job.

Q And that was done at the instance of the Yacht & Motor Sales?

A Yes.

Q I am referring to that portion of Exhibit 1 which is the No. 196, for \$200.

A Yes, sir.

Q And then in addition to that you performed other work, as set forth in Exhibit 1. Is that the work that you have just testified to?

A No, this bill here is for work besides the strut work.

Q Besides the strut work? Besides this as set forth in Libellant's Exhibit 1 for \$200?

A Yes, sir.

(Testimony of Harry C. Carlson)

Q Who ordered that particular work done?

A The Yacht & Motor Sales.

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Q And that was done at the request of the Yacht & Motor Sales?

A Yes, that was what they requested.

Q BY THE MASTER: What was the work they requested you to do?

A To remove the shafts and reline them, and this other work here (indicating on bill).

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Q BY MR. NIX: Mr. Carlson, all of the materials and material and labor and items as set forth on the paper in your hand is all in addition, or work done and labor performed and materials delivered on the boat in addition to the \$200 items that you just testified to?

A Yes, we don't render itemized bills on contract work.

Q And that was done at the request of the Yacht & Motor Sales, each and every item?

A Yes, sir.

Q And they were present and inspected the work?

A Yes, sir, they were present nearly every day. Mr. Offutt and Mr. Wilson. And I had strict orders not to do anything for them without specific orders, and I did not.

MR. NIX: That is all.

CROSS EXAMINATION

BY MR. BRONSON:

Q You say that Mr. Offutt came to you first with the boat?

(Testimony of Harry C. Carlson)

A He brought the boat there, he always run the boat. He brought the boat there, and the request was to haul the boat out in the yard.

Q What was the boat there for then?

A They came up to diagnose the trouble, why it was so noisy.

Q And did you have a conversation with Mr. Offutt about why it was so noisy?

A Yes.

Q As a matter of fact you recommended this change of the struts and the shafts, did you not?

A No. No; I didn't recommend it. I told them what we had done on other boats, and that they could do that if they wanted to.

Q And you suggested a remedy?

A No, I did not suggest it. I told him what we had done on other boats, and he could see the owners of the other boats and get their idea. He came in there and said they had to do something with this boat, it was unduly noisy.

Q He was asking you questions?

A Yes, and I told him to see these other boats that we had made changes on them, and find out about what they thought about what we had done on them.

Q Did you tell him what you had done?

A Yes.

Q What you told him was that you had put new shafts and new struts on the other boats?

A No, not new shafts. Just new struts.

Q And then Mr. Wilson came up to see you?

A Yes.

(Testimony of Harry C. Carlson)

Q And you were given a written order for this work, were you not?

MR. NIX: Specify which work.

Q BY MR. BRONSON: For the work that was then discussed and agreed upon.

A We had two separate orders. We had one order for the struts at an agreed price, that is agreed, not with me, but with Mr. Angelman.

Q Were you the one that had the agreement with this gentleman?

A No, Mr. Angelman gave Mr. Wilson that price on this job of \$200, and that was incorporated in the order.

Q Then what you have testified about these agreements which you had were actually agreements which Mr. Angelman had with somebody, and not your own agreement?

A I have not said I had any agreement with anybody.

Q Did you want the court to understand that you had an agreement with them?

A No, I did not say that. I said Mr. Offutt come there with the boat and wanted me to haul it out, and I did that.

Q Now, you did work for the Yacht & Motor Sales Company on quite a number of boats, did you not?

A Yes, we did all of it.

Q These were principally new boats?

A Yes, they were boats that had come down, shipped down to them.

Q And they were different makes of boats, such as Kriskraft and such?

(Testimony of Harry C. Carlson)

A Oh, yes, whatever they had to do, they were sent up to us.

Q You were performing labor on various makes of boats, new boats that the Yacht & Motor Sales Company sent over to you from time to time?

A Yes.

Q And this was one of them. Now, to sum up briefly, if I may, you were not a direct party to this agreement with reference to the struts that you mentioned?

A No.

THE MASTER: Were you present at the time it was discussed?

A Well, I don't know, I don't remember whether I was or not.

REDIRECT EXAMINATION

BY MR. NIX:

Q You were present and had a conversation with Mr. Wilson when he told you to install those struts, weren't you?

A Yes.

Q Isn't that a fact?

MR. BRONSON: Objected to as leading.

THE MASTER: It is clear enough he had nothing to do with the contract.

MR. NIX: No, but he was instructed to do the work.

THE WITNESS: Oh, I was there when it was agreed to be done.

Q BY MR. NIX: And the work that you testified, outside of the \$200 item, was all extra, and there was none of that work included in the \$200?

A No.

(Testimony of Hugh M. Angelman)

THE MASTER: Well, do you know what work was included in the \$200 agreement?

A Yes.

THE MASTER: How did you know that?

A We talked that over before the work was done, and he was sent then to make his financial arrangements with Mr. Angelman.

Q BY MR. NIX: By "we" you mean Mr. Wilson, of the Yacht & Motor Sales, and yourself?

A Yes, and Mr. Offutt.

(Witness excused.)

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HUGH M. ANGELMAN,

called as a witness on behalf of the Libelant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NIX:

Q Mr. Angelman, did you have a conversation with Mr. Wilson of the Yacht & Motor Sales Company with reference to certain work, to-wit, the building of new struts and line shafts and installing propeller bronze, for \$200; did you have a conversation with him in reference to that?

A I made the agreement with him as to the price.

Q What was that conversation and where did it take place?

A Took place in the office.

Q And who was present?

A Mr. Carlson and myself and Mr. Wilson.

Q And what was your conversation with reference to this one particular item, or the work involving the \$200?

(Testimony of Hugh M. Angelman)

A That we would change those struts for the \$200.

Q And what did Mr. Wilson then say to you?

A He said, "Go ahead and do it" and he would give us this order to do it.

Q And you actually did that work?

A Yes.

Q With respect to the other portions of the work. Is any work or any labor or any material as set forth in the rest of the bill included in the \$200 item?

A No.

Q Then that is all extra?

A That is all extra.

Q That went into the boat?

A Yes.

Q And you had a conversation with Mr. Wilson, or did you have a conversation with Mr. Wilson with reference to that other work?

A No, not so very much. Harry Wilson came down and gave his orders almost daily to Mr. Carlson for that time and material work. He came down almost every day and we did the things he wanted, and that was not a contract, and we were ordered to go ahead and do it.

Q And you talked to Mr. Wilson from time to time about that?

A Yes, I knew all about it and knew what was going on and we had lunch together at times.

Q Did Mr. Wilson at any time question the amount of the labor or material for services rendered in this boat?

MR. BRONSON: Objected to as immaterial.

A No.

MR. NIX: Take the witness.

(Testimony of Hugh M. Angelman)

CROSS EXAMINATION

BY MR. BRONSON:

Q Mr. Angelman, let's see if we understand the matter of the contract for this work. Mr. Offutt came over first to see you?

A He brought the boat in the yard. We never recognized Mr. Offutt as having any authority whatsoever to enter into a contract.

Q Whom did you recognize as having authority for the Yacht & Motor Sales Company?

A Harry Wilson.

Q And you had a conversation in your office about this work?

A With Mr. Wilson.

Q Was Mr. Offutt present?

A I don't remember.

Q But you did have a conversation with Mr. Wilson in your office about this work?

A Yes, sir.

Q And you agreed on that?

A To do the work for \$200.

Q And that was to be confirmed by a written order?

A Yes, sir.

Q And you subsequently got the written order from him as to the work that was agreed to be done?

A Yes, sir.

Q And later Mr. Carlson stated that this other work which is enumerated on the bottom of the bills, which was ordered piecemeal later on?

A Yes, sir.

(Testimony of Hugh M. Angelman)

Q And Mr. Wilson came over and said, "Do this" and that was done, and "Do that" and that was done?

A Yes, sir.

Q And that was done?

A Yes, sir.

MR. BRONSON: That is all.

REDIRECT EXAMINATION

BY MR. NIX:

Q The amount as set forth in the bills are reasonable charges?

A They were going charges, average charges for the going rates at that time for the material and labor.

MR. NIX: That is all.

MR. BRONSON: I was offering the depositions taken at Seattle.

THE MASTER: In the meantime, I have read the deposition. I understand that your objection, Mr. Nix, goes to the relevancy of communications between the Yacht & Motor Sales Company and the claimant here, is that?

MR. NIX: That is right.

THE MASTER: I don't believe it will be necessary to read the depositions. I already have glanced them over, and I will read them more carefully at a later time. Is there any other testimony?

MR. BRONSON: I wanted to offer the depositions in evidence.

THE MASTER: They will be received, subject to Mr. Nix's motion to strike out any parts.

(Testimony of Hugh M. Angelman)

MR. NIX: I desire then to make a motion to strike the entire depositions at this time.

THE MASTER: That goes to the matter of proof rather than to the relevancy or competency of the evidence.

MR. NIX: And also, to further protect myself, I desire to make a motion to strike each and every question and answer separately and individually.

THE MASTER: Yes, you won't be prejudiced by that, your objection will be considered.

Have you offered all the evidence?

MR. BRONSON: No, I have some additional evidence.

THE MASTER: I wonder if you would offer all the evidence first.

MR. BRONSON: I wish to offer a certified copy of the charter of the vessel.

THE MASTER: Don't you have that attached to the depositions?

MR. BRONSON: Yes, I have it attached; it will not be necessary to offer it separately. I offer in evidence the paper which the Master has marked Claimant's Exhibit A for Identification.

MR. NIX: No objection.

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MR. BRONSON: The additional evidence which the claimant wishes to put in, I am afraid will have to be put in the form of depositions, which we will have taken at once. Mr. Wilson, through some misunderstanding, is not here today. I understand from his office that he came up thinking the hearing was this morning, and he,

(Testimony of Hugh M. Angelman)

misunderstanding the time, had some dates for this afternoon. We would like to have the hearing held open long enough so that we may take and put in the depositions.

THE MASTER: Very well.

MR. BRONSON: Mr. Offutt also, we have not been able to locate him yet, and we would like to put in his testimony.

MR. NIX: Then we are going to have to have some rebuttal on that.

THE MASTER: If you wish to take depositions that will be satisfactory, if you will take them within a reasonable time. How much time do you want to take depositions?

MR. BRONSON: Time enough for me to arrange the taking of them; I imagine we can have them here in 20 days.

MR. NIX: Then, as the matter stands now, it stands submitted, subject to the consideration of the depositions which will be taken hereafter?

MR. BRONSON: Yes.

THE MASTER: Very well, the matter will be submitted, and when those depositions are filed I will consider them in the case.

[Endorsed]: Filed Nov 3-1932 R. S. Zimmerman,
Clerk By Edmund L Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

DEPOSITIONS ON BEHALF OF CLAIMANT.

Depositions of H. B. JONES, OTIS CUTTING and J. L. McLEAN, witnesses called on behalf of the claimant herein, who reside outside of the State of California and the Southern District of California, and at a greater

(Deposition of H. B. Jones)

distance than one hundred miles therefrom, taken by deposition de bene esse, pursuant to Notice attached hereto.

ROBERT E. BRONSON, ESQ., (of Messrs. Bronson, Jones & Bronson, appeared as proctor for claimant;

No appearance was made on behalf of any other party.

The said witnesses being first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, and being carefully examined deposed and said as follows:

DEPOSITION OF H. B. JONES.

DIRECT EXAMINATION

BY MR. BRONSON:

Q Mr. Jones, will you please state your full name, place of residence, and business?

A Harry B. Jones; my residence is Seattle, Washington; and my business is attorney.

Q What connection, if any, have you with the claimant, Lake Union Dry Dock & Machine Works?

A I am secretary of the Lake Union Dry Dock & Machine Works, and have been secretary for a period of several years. I do not remember exactly the date I was elected, but it was long prior to the transaction involved in this case. I have also acted as attorney for the Lake Union Dry Dock & Machine Works during all that time.

Q Were you familiar with any of the dealings between the Lake Union Dry Dock & Machine Works and the Yacht and Motor Sales Corporation, with reference to this vessel called the "Luddeo 41"?

(Deposition of H. B. Jones)

A Yes; I was familiar with that vessel and with the entire course of dealing between the parties during the years 1930 and 1931.

Q Will you relate in your own words just what negotiations were entered into, and what was the result of the negotiations with reference to that boat, as between those two companies, giving the dates, approximately, as you go along.

A It is necessary to go back a little bit before the time when this boat was delivered by the Lake Union Dry Dock & Machine Works to the Yacht and Motor Sales Corporation, to a time in February, 1930, when Mr. Cutting, Vice President of the Lake Union Dry Dock & Machine Works, and myself were in Los Angeles and Wilmington, dealing with the Yacht and Motor Sales Corporation.

Q May I interrupt just a moment; were you then secretary of the company?

A Yes. At all the time I will refer to in this testimony I was secretary and attorney for the company.

We were in Los Angeles and Wilmington dealing with Mr. Ralph Proctor, Vice President of the Yacht and Motor Sales Corporation, and Mr. Harry C. Wilson, the Secretary and Treasurer of the Yacht and Motor Sales Corporation, with reference to some boats that the Lake Union Dry Dock & Machine Works had previously shipped them, and the matter of arrangements covering future deliveries or shipments of boats.

The particular matter under discussion at that time was the basis on which the Lake Union Dry Dock & Machine Works would continue to construct and supply

(Deposition of H. B. Jones)

to the Yacht and Motor Sales Corporation pleasure craft, and after a great deal of discussion it was stated between myself and Mr. Proctor and Mr. Wilson, they representing the Yacht and Motor Sales Corporation, that in as much as they were unable to pay in full for boats that we would construct and ship to them we would ship such boats as we might care to send down on consignment, and the boats were to remain the property of the Lake Union Dry Dock & Machine Works until they were sold. The boats were to be documented in the name of Lake Union Dry Dock & Machine Works, and the Yacht and Motor Sales Corporation was to handle them and care for them entirely at their own expense, and sell them for prices which would net to the Lake Union Dry Dock & Machine Works the basic price which that company fixed on the boat at the time the boat was shipped down. That arrangement was accepted by Mr. Proctor and by Mr. Wilson, on behalf of the Yacht and Motor Sales Corporation on the one side, and approved by Mr. Cutting and myself, representing the Lake Union Dry Dock & Machine Works, on the other.

Mr. Cutting and I returned to Seattle, and during the course of the next few months, besides many other dealings, there were negotiations by the Yacht and Motor Sales Corporation to have us ship down to them this 52-foot boat which is known as "Luddeco 41".

Q Were any different arrangements entered into with regard to this boat that you have just mentioned with reference to the other boats?

A No; there were no different arrangements made with reference to this boat. When the time came that

(Deposition of H. B. Jones)

the boat was ready for shipment, in order to be absolutely sure that the arrangements as previously made would stand as to this boat, and were clearly understood, I dictated a telegram which was sent to the Yacht and Motor Sales Corporation, dated June 18, 1930, of which I have here a copy. I now produce a copy of that telegram.

MR. BRONSON: I will have that marked for identification.

(Telegram marked for identification Claimant's Exhibit No. 1.)

Q You personally had that telegram transmitted, did you?

A Yes; and I dictated the telegram myself.

Q You are referring now to Claimant's Exhibit No. 1 for Identification, in connection with this deposition?

A Yes. You asked me if any different arrangements were made; perhaps I ought to add this, that there was no different arrangement made as to the understanding regarding title or the responsibility for any expense of handling and upkeep after the boat was delivered, which was to be borne by the Yacht and Motor Sales Corporation, but there was a further arrangement made that as an initial payment on this boat the Yacht and Motor Sales Corporation was to deliver the power plant, which they obtained through being the representative of some engine manufacturer, to the Lake Union Dry Dock & Machine Works, and it should become a part of the boat and constitute a payment on account of the purchase price of the boat.

(Deposition of H. B. Jones)

Q What was the understanding with reference to the upkeep of the boats after they had been shipped to the Yacht and Motor Sales Corporation?

A The agreement was very definitely made that those expenses were to be borne entirely by the Yacht and Motor Sales Corporation.

Q Was it contemplated that anything of any substantial character would be required to be done to the vessels after their shipment to California?

A No; it was not expected that there would be any substantial work to be done on them. The expenses that we had in mind were insurance, taxes, warehousing expenses, if any, interest on the amount due the Lake Union Dry Dock & Machine Works, which they were to pay, and the necessary expenses of upkeep, which it was contemplated would be painting and cleaning and keeping up the boat in ordinary shape.

Q Those boats, including this "Luddco 41", were new vessels, ready to operate, as they were sent down, were they?

A Yes, they were newly constructed vessels.

Q Was a definite understanding had about these maintenance charges; were they definitely discussed?

A Either Mr. Wilson or Mr. Proctor—I think it was Mr. Wilson—stated definitely that they would keep up the boats in good shape by way of painting and varnishing them and maintaining them in good shape, at their own expense.

Q Do you know whether or not they had a plant or equipment down there which would enable them to do that right at their own place?

(Deposition of H. B. Jones)

A They did have, and told us that they had their own men employed who would do that work.

Q And you contemplated that that would be done?

A That was our understanding, that that would be done by them at their own expense.

Q Was any authority ever given to the Yacht and Motor Sales Corporation by the Lake Union Dry Dock & Machine Works, so far as your knowledge goes, by which they were authorized to have any outside work done on these vessels by outside parties, or to incur any liens or lienable charges against them?

A There never was any such authority given, and there never was any occasion for giving it, because there was never notice or intimation to the Lake Union Dry Dock & Machine Works, or to me, that there was any necessity for doing any such work, outside of the work that they would do to keep the boats painted and in condition, through their own employees and at their own plant.

Q These vessels were shipped down to Los Angeles in what way?

A They were shipped down on the deck of another vessel, and unloaded, I think, at Wilmington.

Q And was it or not intended that they should operate as vessels down there while in the hands of the Yacht and Motor Sales Corporation, other than for demonstration purposes?

A Only to the extent necessary for demonstration purposes.

Q Did you get a reply to that telegram that you have mentioned, now marked as Claimant's Exhibit No. 1 for Identification?

(Deposition of H. B. Jones)

A I did. This telegram, which is addressed to Mr. Cutting, was received by the Lake Union Dry Dock & Machine Works and turned over to me, and has been in my possession since. The telegram is dated June 19, 1930.

MR. BRONSON: I will have that marked for identification as Claimant's Exhibit No. 2.

(Telegram marked for identification Claimant's Exhibit No. 2.)

Q Do you know whether or not the Lake Union Dry Dock & Machine Works, or yourself, personally, received any knowledge that any work was to be done on these vessels by the Wilmington Boat Works at any time prior to the time that the work had been completed?

A No; neither the Lake Union Dry Dock & Machine Works nor myself received any such knowledge prior to the time the work was done.

Q And had any such work been authorized by the Lake Union Dry Dock & Machine Works, then or at any time since?

A It had not been authorized then and never has been.

Q Do you know whether any communications with reference to this "Luddco 41" were received by the Lake Union Dry Dock & Machine Works from the Yacht and Motor Sales Corporation subsequent to the transmission of those telegrams?

A Yes; a number of letters were received, which I have in my possession as secretary of the company, and as its attorney.

Q Will you state in your own words the substance of the information that was given to you by the Yacht and Motor Sales Corporation with reference to what they had

(Deposition of H. B. Jones)

done, and on what basis they had had any work done to this "Luddco 41" by the Wilmington Boat Works.

A We were advised by correspondence—and also I talked to Mr. Wilson from time to time over the telephone—that this work which is involved in this suit or libel of the Wilmington Boat Works had been ordered by some employee of the Yacht and Motor Sales Corporation on its own credit and on the basis of a written order limiting the cost of the work, and that it was done on the responsibility of the Yacht and Motor Sales Corporation, and was to be paid for by it and not by the Lake Union Dry Dock & Machine Works, or as a charge against the vessel.

Q Have you any letters containing information such as you have mentioned, Mr. Jones?

A I have a letter of July 3, 1930, which we received in due course of mail, signed by Mr. Harry C. Wilson, the secretary-treasurer of the Yacht and Motor Sales Corporation.

MR. BRONSON: I will have that marked as Claimant's Exhibit No. 3 for Identification.

(Letter marked for identification Claimant's Exhibit No. 3.)

A I have another letter dated November 13, 1930, signed by Mr. Harry C. Wilson, the secretary-treasurer of the Yacht and Motor Sales Corporation.

MR. BRONSON: I will have that identified as Claimant's Exhibit No. 4.

(Letter marked for identification Claimant's Exhibit No. 4.)

(Deposition of H. B. Jones)

A I have another letter dated May 12, 1931, which was written after the time that the Yacht and Motor Sales Corporation was put in bankruptcy.

MR. BRONSON: I will have that marked Claimant's Exhibit 5 for Identification.

(Letter marked for identification Claimant's Exhibit No. 5.)

A And another letter, which is not dated, but which was written, I would say, sometime in October, 1930, or subsequently thereto. At any rate, it was a substantial time subsequent to the performance of the work involved in this case.

MR. BRONSON: I will have that marked for identification as Claimant's Exhibit No. 6.

(Letter marked for identification Claimant's Exhibit No. 6.)

MR. BRONSON: I now offer in evidence Exhibits marked for identification as Claimant's Exhibits Nos. 1, 2, 3, 4, 5 and 6, as part of the testimony of the witness.

(Documents marked Claimant's Exhibits Nos. 1 to 6, inclusive, attached to and made a part of this deposition, and returned herewith.)

Q When was the first information that you received, or that the Lake Union Dry Dock & Machine Works received, of the fact that any work outside of the actual plant of the Yacht and Motor Sales Corporation had been performed on this "Luddco 41"?

A I believe the first information was contained in a letter from Mr. Wilson, dated September 17, 1930, but we did not pay very much attention to it because it did not state the magnitude of the work, and it gave us to under-

(Deposition of H. B. Jones)

stand that it was entirely on their own responsibility and at their own expense.

Q As a matter of fact, were you even then advised that the work had been done by any outside parties?

A No. There was nothing in that letter to indicate that the work was done by outside parties.

Q Was it before or after the receipt of that letter that you first discovered that the work had been done by any concern other than the Yacht and Motor Sales Corporation?

A It was after the receipt of this letter, and I think not until sometime in November, 1930, that we found that there was any claim against the boat, or by any outside party on account of this work.

MR. BRONSON: I will have this letter you have handed me marked as Claimant's Exhibit No. 7, and I offer it in evidence.

(Letter marked Claimant's Exhibit No. 7, attached to and made a part of this deposition, and returned herewith.)

Q Do you think of anything else, Mr. Jones, that bears on this subject that is within your knowledge?

A Only this, that the arrangement made by Mr. Proctor and Mr. Wilson, in February, 1930, was that these boats as shipped would either be documented in the name of Lake Union Dry Dock & Machine Works, at Seattle, or if that were impracticable, would be documented in our name by the Yacht and Motor Sales Corporation, through the office of the Collector of Customs at San Pedro. We found it impracticable to document these vessels at Seattle, but we were assured that they would

(Deposition of H. B. Jones)

be documented in our name as soon as they arrived at Wilmington. We were so assured by the Yacht and Motor Sales Corporation, that they would be documented in our name as soon as they arrived at Wilmington. In answer to inquiries which I made of the Yacht and Motor Sales Corporation after the "Luddco 41" was shipped, I was definitely assured that this boat had been documented in our name.

Q By whom?

A By the Yacht and Motor Sales Corporation, through the office of the Collector of Customs at San Pedro.

Q Who gave you that assurance?

A It is contained in letters from Mr. Harry C. Wilson. I do not remember whether those letters are in evidence or not.

Q Do you know whether or not the vessels were actually documented at that time?

A The vessels were not documented at that time. I was down in Wilmington and San Pedro at the end of 1930, and at that time I found that the vessels had not been documented in our name formally, but that the Customs Office had been informally notified that they were our property, and I believe their records contained a notation to that effect. Subsequently, as a result of my taking the matter up when I was down there in December, 1930, this boat was formally documented, I think on January 21, 1931.

Q I have here what purports to be a certified copy of consolidated enrollment and yacht license, issued by the

(Deposition of Otis Cutting)

Collector of Customs at Los Angeles, which I now show to you.

A Yes, that is it.

MR. BRONSON: I will have that marked as Claimant's Exhibit No. 8, and I offer it in evidence.

(Document marked Claimant's Exhibit No. 8, attached to and made a part of this deposition, and returned herewith.)

Q Had any conveyance of the hull or any part of this "Luddco 41" ever been made to anyone by the Lake Union Dry Dock & Machine Works, up until the institution of this suit?

A No, not prior to the institution of this suit.

Q Where did the ownership of that vessel rest up until that time?

A At all times in the Lake Union Dry Dock & Machine Works.

MR. BRONSON: I think that is all, Mr. Jones.

H. B. Jones.

(DEPOSITION CONCLUDED)

DEPOSITION OF OTIS CUTTING.

DIRECT EXAMINATION

BY MR. BRONSON:

Q Your name is Otis Cutting?

A Yes, sir.

Q You have heard the testimony of Mr. Jones with reference to the negotiations which were carried on in Wilmington, California, between Mr. Jones and yourself and Mr. Wilson and Mr. Proctor?

A Yes; I heard Mr. Jones' testimony.

(Deposition of Otis Cutting)

Q What is your connection with the Lake Union Dry Dock & Machine Works?

A Vice president and treasurer.

Q You reside here in Seattle, do you?

A In Seattle, yes, sir. I am also general manager of the company?

Q Who carries on the active work of the Lake Union Dry Dock & Machine Works as a dry dock, who has charge of that work?

A I do.

Q Have you occupied that position, and been carrying on that work for the Lake Union Dry Dock & Machine Works since before the time this "Luddco 41" was built?

A I was.

Q Who had charge of the actual building of the "Luddco 41"?

A I did.

Q Were you present when Mr. Jones had these negotiations that he has mentioned, in Wilmington?

A I was.

Q Do you recall them having occurred?

A I do.

Q Is your understanding or recollection of what transpired or occurred in connection with the negotiations any different from what Mr. Jones has stated in his testimony?

A No, I think not.

Q. Did you at any time, Mr. Cutting, give any authority to the Yacht and Motor Sales Corporation to incur any liens or lienable charges against this boat, while it was in their possession?

(Deposition of Otis Cutting)

A I did not.

Q Was it understood that they were to have any such authority, at any time?

A No, sir.

Q You actually received this letter in the first instance, did you not, which Mr. Jones has identified?

A Yes, I did.

Q You have seen these, have you?

A Yes, I saw them.

Q These Claimant's Exhibits Nos. 3, 4, 5, 6 and 7?

A Yes; I think they all came to me in the first place.

Q Mr. Cutting, were these boats, including this "Luddco 41," which were sent down there, under consignment, vessels complete and ready for operation?

A They were complete.

Q Was it contemplated that any construction work or alteration work, or repairs, or anything of that kind, would be required for them in any particular when they were sent down there?

A No, sir; no work of that kind was anticipated.

Q Were they or were they not ready to operate as boats, to start right out and run?

A They were. They were tried out here before they were shipped.

Q Were they completely finished as to furnishings and painting and everything of that kind?

A Complete in every detail.

Q In the hands of the Yacht and Motor Sales Corporation what expenses would possibly be incurred against the vessels, with reference to the purpose for which they were turned over?

(Deposition of J. L. McLean)

A To have them cleaned up and re-painted, and varnished, etc., which they could do themselves.

Q. Do you recall what the arrangement was with reference to the matter of taxes, if they remained there any length of time?

A They were to take care of all expenses after they received the boats.

Q And the title to the boats was to remain where?

A To remain with the Lake Union Dry Dock & Machine Works.

Q As a matter of fact, was it ever contemplated that the title to these boats was to go to the Yacht and Motor Sales Corporation, at any time?

A No.

Q Or was the title to go to the ultimate purchaser?

A We never had the understanding that the title was to go to the Yacht and Motor Sales Corporation at any time.

MR. BRONSON: I think that is all.

Otis Cutting

(DEPOSITION CONCLUDED)

DEPOSITION OF J. L. McLEAN

DIRECT EXAMINATION

BY MR. BRONSON:

Q Your full name is J. L. McLean?

A That is right.

Q You reside where, Mr. McLean?

A Seattle, Washington.

Q You are the president of the Lake Union Dry Dock & Machine Works?

(Deposition of J. L. McLean)

A I am.

Q And you have been during all the times mentioned in the testimony here the president of that company, have you?

A I have been, yes, sir.

Q Did you or did you not actively enter into these negotiations that have been testified to here?

A. We did.

Q. I say, did you, individually?

A. No, I did not, individually.

Q. You knew that these negotiations were being carried on, however?

A I was very familiar with them, by reason of daily contact with Mr. Cutting, the vice president and general manager of the company.

Q Did you ever have any direct correspondence or personal contact with anybody connected with the Yacht and Motor Sales Corporation, in reference to these boats?

A I had no personal correspondence, beyond that which came addressed to our company, which I saw from time to time, with the exception of the trip that I made to Los Angeles with Mr. Cutting in August, 1930, at which time I visited the plant of the Yacht and Motor Sales Corporation, at Wilmington, and saw our boats there.

Q That was after this arrangement had been made and the boats had been sent down there, you mean?

A Oh, yes, sir.

Q Did you at any time give any authorization to anybody connected with the Yacht and Motor Sales Corporation, or to anyone else, to incur any liens, or impress any lienable charges against this vessel, or any of the other vessels there?

A Positively none whatsoever.

(Deposition of J. L. McLean)

Q Was it your understanding that any such charges were to be incurred by the Yacht and Motor Sales Corporation, in connection with these vessels while in their possession?

A It was my very clear understanding that all expenses incident to their care or upkeep, of any kind or nature, while the boats were in their possession and yet unsold, were to be borne by the Yacht and Motor Sales Corporation?

Q Mr. McLean, on this visit that you say you made down there to the Yacht and Motor Sales Corporation, what was the purpose of that visit?

A Well, the primary purpose of the visit was to look into the size and calibre of the Yacht and Motor sales Corporation plant and business, and to further investigate and see if it were not possible to effect *and* immediate sale of those boats, in view of the fact that they had been there for some time, and the pleasure boat business was at that time, and thereafter, rather falling off, as a result of the general economic conditions, brought on first by the stock market crash in October of 1929, and to that end we conferred with officers of the Yacht and Motor Sales Corporation, even going so far as to cut our sale price down to practically cost, eliminating all profit, in an endeavor to induce them to sell the boats.

Q Were you advised or notified by anyone while you were down there on that visit that any alterations or changes were contemplated in this hull?

A We were not, beyond a mere conversation indicating that if they were building boats they might suggest changes in this or that equipment, but I do not recall just what the specific items were. But we laid no particular stress on that, because of the fact that the boats had been built similar, almost in every particular, to a large number of other boats of the same kind that were built

(Deposition of J. L. McLean)

and sold, many of which had gone to the Southern California market.

Q They made no mention to you of any specific alterations or repairs, or changes, or work that they contemplated then making in this hull?

A None whatever.

Q Did you have any knowledge that any such work was contemplated or was being done, at any time until subsequent to the actual doing of the work?

A None whatever, or until Mr. Cutting had received a letter, months afterwards, indicating what they had done.

MR. BRONSON: I think that is all.

J. L. McLean

(DEPOSITION CONCLUDED)

[Endorsed]: Filed Mar 26, 1932. R. S. Zimmerman, Clerk, by C. A. Simmons, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

HON. DAVID B. HEAD, SPECIAL MASTER.

Deposition of HARRY C. WILSON, a witness taken on behalf of the Respondent, Lake Union Dry Dock Company, before M. A. Clark, Notary Public in and for the County of Los Angeles, State of California, at Suite 623 Title Insurance Building, Los Angeles, California, on Friday, April 8, 1932, at the hour of 10 o'clock a. m., pursuant to the stipulation hereto annexed.

PRESENT:

LLOYD S. NIX, ESQ., for the Libelant.

ROBERT E. BRONSON, ESQ., for Respondent
Lake Union Dry Dock Company.

(Testimony of Harry C. Wilson)

HARRY C. WILSON,

a witness called on behalf of the Respondent Lake Union Dry Dock Company, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRONSON:

Q Your name is Harry C. Wilson?

A That is right.

Q Where do you reside, Mr. Wilson?

A My residence?

Q Yes.

A I live in the Hollywood Riviera.

Q What is your business at the present time?

A Yacht broker.

Q In the fall of 1930 what business were you?

A Yacht broker.

Q Were you connected with any company at that time?

A Yacht & Motor Sales Corporation.

Q What was your connection with that company?

A Secretary and treasurer.

Q Were you in operating charge of the business at that time, I mean were you conducting the business at that time?

A In that capacity, I was conducting.

Q Actually managing?

A As one of the officers I was, yes.

Q What was the business of the Yacht & Motor Sales Corporation along say in September, 1930?

A They were sales agents for certain stock lines of boats and motors and yacht brokers.

(Testimony of Harry C. Wilson)

Q Did you handle more than one line of boats?

A Yes.

Q Are you familiar with this "LUDDCO 41"?

A Yes.

Q Was that vessel in the possession of the Yacht & Motor Sales Company in September of 1930, or about that time?

A Yes.

Q For what purpose was it in possession of the Yacht & Motor Sales Company?

MR. NIX: Objected to as calling for a conclusion of the witness.

A In our possession to sell.

Q Do you know who owned the boat at that time?

A Yes.

Q Who was it?

A The Lake Union Dry Dock Company.

Q And on what basis was it in your hands for sale from the Lake Union Dry Dock Company?

A Consigned.

Q Consigned to the Yacht & Motor Sales Corporation?

A Yes.

Q And the Yacht Motor Sales was, I presume, getting a commission for the selling of the boat?

A Yes.

Q Was that a new or second hand boat?

A New.

Q Did you have a gentleman by the name of Mr. Offutt, in the employ of the Yacht & Motor Sales Company at this time?

(Testimony of Harry C. Wilson)

A Yes.

Q What was his capacity with the company?

A Superintendent of service.

Q And generally, what would that be with the boats, what would the superintendent of service do with the boats?

A Managing the repair work and care of the boats.

Q Now, along in September, about the 10th of September, 1930, did you have occasion to have any work done on the "LUDDCO 41" by the Wilmington Boat Works?

A Yes.

Q I wish you would tell me in your own words what arrangements were made for the work and what the work was.

A Mr. Offutt told me that the boat was leaking badly. He also informed me that in his opinion the water inlets were not properly placed, and asked for an order to take the boat to the Wilmington Boat Works to the dry dock for the purpose of repairing the transom, the planking around the transom, where the leak was coming in, and to change the location of the water inlets for the circulating of the motors, cooling of the motors, and I gave him an order for that work.

Q What was done after that in connection with any work on the boat?

A There had always been considerable vibration in that particular boat, and while the boat was on the ways I asked Eddie—

Q (Interrupting) Is Eddie Mr. Offutt?

(Testimony of Harry C. Wilson)

A Yes. I asked Eddie to take the matter up with the boys at the shipyard, to get their opinion on the boat, while it was on the dry dock, to see if they could help solve that problem. Harry Carlson, who was superintendent of the Wilmington Boat Works, told Eddie that he thought it was all in the struts.

MR. NIX: Objected to all of that as hearsay, and move that it be stricken.

Q Tell me this; did you deal, yourself, with anybody connected with the Wilmington Boat Works in connection with this work?

A No.

Q From whom, or rather, through whom was that done on behalf of the Yacht & Motor Sales?

A Our superintendent.

Q Mr. Offutt?

A Yes.

Q Did you order any work done on the vessel in connection with this vibration?

A I instructed them to order the struts changed and new shafts put in.

Q Was any price fixed for that work?

A There was a price fixed of \$200 for new struts installed, and the cost of two new bronze shafts which was not ascertained at that time.

Q Tell me exactly what this \$200 item was to cover.

A That was to make patterns for a special type of strut, and have the bronze castings made from those patterns, have them machined and installed in the boat.

Q Did it have anything to do with the installation of the shafts?

(Testimony of Harry C. Wilson)

A I think it did. I think it was to include the labor of installing the shafts, but the cost of the shafts was to be extra.

Q The cost of the shafts was to be in addition to the \$200?

A Yes.

Q Was this work ordered in writing or orally?

A It was in writing.

Q Handing you Claimant's Exhibit A, I will ask you whether or not that is a copy of the order which was given to the Wilmington Boat Works for the work that you have just described.

A Yes, that is right.

Q Did you subsequently find out what the cost of the shafts themselves was?

A I don't remember exactly. Around \$80, 80 some odd dollars, as near as I could remember.

Q Now was any other work ordered on this boat, other than the \$200 item, which has been mentioned, and the shafts and the transom which you mentioned?

A On the circulating system.

Q Do you know what the cost would normally be of preparing the transom that you have mentioned, where this leak was?

A I don't want to estimate any work at this time. I did not see any of this stuff, and I am not qualified to say exactly what it would cost.

Q Well, can you give me any idea of what the work was to consist of?

A The work would consist of refastening the ends of the planking where they had pulled loose from the

(Testimony of Harry C. Wilson)

transom. That would take care of the leak there, and it would consist of shifting of the water inlets, two of them, one for each motor, to a different location in the bottom of the boat.

Q Would you have any idea of what that would cost?

A If Mr. Carlson will tell me exactly how many planks he fastened and exactly what material was needed for the changing of the water system I can tell from my experience what it should cost.

Q Well, it consisted of tightening planks around the stern of the boat?

A Refastening planks around the bottom of the boat and caulking the seams.

Q And moving of pipe connections?

A Two inlets. They are sea fittings, they would be plugged up, the old holes would be plugged up and put in new cocks and piping up to the water pumps.

Q Did you have any knowledge at the time about what this transom work was going to cost, these water connections, at the time you sent the boat over?

A Not exactly. It was something that had to be done, and I just had confidence in the boat works and I gave them orders to go ahead on a time and material basis. On the other job, which was more or less of an experiment, I required more or less of a firm price before I gave the order on it.

Q Did the transom and water exchange cost in excess of \$50?

A I would rather see a list of the material that was needed in that before estimating that.

(Testimony of Harry C. Wilson)

Q You are not able to give any estimate of what that would cost?

A I think that \$50 would cover labor, but material would be extra to that.

Q What material would be necessary for that, other than oakum?

A Nuts for the fastening, and painting and putty and the sea fittings. There would be some new fittings but they could use mostly old parts.

Q What new fittings were necessary?

A I believe we ordered him to put new scoops on, which they would have to furnish. They would have to furnish some different size nipples, and hose and hose clamps. They could use the same valves.

Q It has been testified to, Mr. Wilson, that you were over at the plant of the Wilmington Boat Works while this work was being done at varying times, every other day or so, and directing work to be done on this boat. Is that correct?

A I went over just once. When the boat first went out I went over and gave my own instructions verbally to Harry Carlson, their superintendent, and showed him where I wanted the sea cocks moved to and told him to repair the transom. That is the only time I was over at the boat works.

Q And you did not then discuss any estimate of costs for the transom and sea cock work?

A No, I told him to go ahead on a time and material basis and do it as reasonably as possible.

Q Did you at that time order this work which was subsequently covered by a written order?

(Testimony of Harry C. Wilson)

A No. That was not discussed at that time.

Q Did you go over on any other occasion?

A No, I never was over there again.

Q Who was present when you went over the first time?

A Harry Carlson.

Q Handing you Libelant's Exhibit 1, Mr. Wilson, are you able to tell from looking at that bill, are you able to identify the items on there with these various jobs that you have mentioned, the transom, the sea connections, and the struts on the shafts?

A I am not very well qualified to do this analyzing; it would be the proper job of Mr. Offutt and Harry Carlson. I can go through here and recognize various items.

Q See if you can do that, any that you can recognize as being subject to identification with any of those three.

A Just what do you want me to do?

Q If you can identify an item as being the transom or an item as being the water circulation or the struts and shafts. Just identify for me any that you can, please.

A Do you want me to go through the entire bill?

Q Yes, if you can identify the items. I would say take items of a dollar or more. Don't bother with the items less than a dollar.

A If we are going to do that I would like to do it in the presence of Carlson or Offutt. Is that possible?

Q I don't know, I have not been able to get Mr. Offutt. If there are items which you can't identify I don't want you to attempt to do it. If there are items which you can identify in that bill as for instance an

(Testimony of Harry C. Wilson)

item known as two 1-7/16 Dodge flange couplings. Do you know what those were?

A I don't know what they could have been used for.

Q Take the item of 22 pounds of Sierra Babbit. Do you know what that would be used for?

A That would be used in the stern bearing.

Q Is that in connection with the shafts and struts?

A Yes.

Q Take the item of two 1-1/2 x 18 Tobin Br. shafts, \$81.20.

A That is a correct charge.

Q That was the item of shafts that you mentioned before?

A Yes.

Q As being in addition to the \$200 item?

A Yes, I agreed to that.

Q Take the item of one 2 inch Goodrich cutlass bearing, \$24.83.

A I did not order those.

Q Do you know whether or not that would be used in connection with the shafts and struts?

A They were used in the struts apparently, but it is possible that Offutt ordered those extra, although he should not have. Of course my instructions to Offutt would not have any bearing on this.

Q The matter simmers down to this, that the \$200 which you did authorize was to cover the work mentioned on the order itself?

A Yes.

Q That was to cover the complete job as shown on that order?

(Testimony of Harry C. Wilson)

A This order, \$200, according to my understanding, was to build and install two new type of struts and to install two propeller shafts.

Q That would be the complete work with the exception of the cost of the shafts themselves?

A Yes.

Q Which you say was about \$81, or \$80?

A Yes.

Q And that was intended to cover all cost of that work, the \$281?

A That was my understanding of the thing.

Q That was the basis on which you ordered the work done with the written order?

A Yes.

Q And the other items were time and material, the fastening of the transom?

A That was extra.

Q And changing the position of the intake valves, putting the scoops on?

A That was extra.

Q What are those scoops?

A They are bronze castings that scoop the water, and drive it into the intake.

Q Was this work ordered for the Yacht & Motor Sales Company, the work to be done for the Yacht & Motor Sales Company?

MR. NIX: I object, he can state what conversation he had, and then it is up to the court to determine how it was ordered, or who it was ordered for. He can't say what his opinion is. He can testify what he actually did and then it is for the court to determine.

(Testimony of Harry C. Wilson)

Q Can you answer the question? In other words, did you expect the Yacht & Motor Sales Company to pay for this work which was ordered?

A I expected to pay for it, yes.

Q And it was ordered on the account of the Yacht & Motor Sales Company?

MR. NIX: I object to that. He can state the conversations, as between this man and the representatives of the Wilmington Boat Company.

A Yes, it was.

Q Did you have any authorization to order any work for the Lake Union Dry Dock, for its account?

A No.

Q Was this work ultimately billed to you, to the Yacht & Motor Sales Company?

A Yes.

Q And when you ordered this work you expected that the Yacht & Motor Sales Company was going to pay for the work?

A Yes.

MR. BRONSON: You may cross examine.

CROSS EXAMINATION

BY MR. NIX:

Q Mr. Wilson, when the boat was taken and placed on the ways, you inspected the same, is that right?

A Yes.

Q And at that time you had a conversation with Hugh Angelman?

A Harry Carlson.

(Testimony of Harry C. Wilson)

Q And at the time of your conversation with Harry Carlson you inspected the boat in a general way, is that right?

A That is right.

Q And you determined that certain work had to be done on the boat. Is that right?

A That is right.

Q The boat was in the possession of the Yacht & Motor Sales Company?

A That is right.

Q When was the boat sent to you?

A When?

Q Yes.

A In July, 1930.

Q In July of 1930?

A Yes.

Q And you had a—how did you carry this boat on your books? Isn't it a fact that you set this boat up as an asset on the books of the Yacht & Motor Sales?

A No.

Q Isn't it a fact that you at one time were going to sell, or were dickering for the sale of your business to the Wilmington Boat Works?

A That is right.

Q And isn't it a fact that you submitted a statement of your business at that time?

A That is right.

Q And did you set this boat up as an asset?

A No.

Q You placed an engine in this boat, did you not?

A That is right.

(Testimony of Harry C. Wilson)

Q And you were given a credit on a purchase price by the Lake Union Dry Dock Company?

MR. BRONSON: Objected to as immaterial.

A What is that again?

Q You placed an engine in that boat and were given a credit by the Lake Union Dry Dock Company on account of the purchase price of the boat by your company, is that right?

A No.

Q Mr. Wilson; Mr. H. B. Jones, do you know Mr. Jones?

A Yes.

Q He testified in a deposition as follows. Quoting from line 5, page 6: "But there was a further arrangement made as an initial payment on this boat. The Yacht & Motor Sales Corporation was to deliver the power plant which they obtained, through being the representative of some engine manufacturer, to the Lake Union Dry Dock machine, and it should become a part of the boat and constitute a payment on account of the purchase price of the boat." Do you recall that?

MR. BRONSON: Objected to as no time is shown.

A May I explain the way that arrangement was made, amounts to the same thing. Lake Union Dry Dock Company furnished hulls to us on consignment. We furnished the engines. We were distributors for engines and could buy them cheaper than they could buy them, and we owned the engines in this boat, as well as in other boats. They owned the hulls, and we owned the engines. It amounts to the same thing.

(Testimony of Harry C. Wilson)

Q What do you mean by that, that it was a part of the purchase price?

A We had an interest in the boat to the extent of our investment in the boat.

Q Sort of a copartnership, was it?

A No.

Q Or interest in the boat depending upon the amount of expenditures that you made for and on account of engines in the boat?

A We set up on our books an asset showing these engines or motors owned by us. We did not set up the boats any where, they were not carried on our books at all. The hulls were not ours, only the motors. I can add—what Mr. Jones is referring to there—

Q (Interrupting) Just what you know of your own knowledge.

A I will add that the Lake Union Company, we owed them approximately \$4000.

Q For what?

A Open account.

Q Open account?

A Balance due on a particular boat, we had not paid for. We had sold that boat and had not paid in full for it.

Q Which boat are you referring to now?

A It was a boat sold in Santa Barbara. A different boat entirely. We still owed \$4000 on the payment of that boat.

Q What was the name of that?

A "See Vee."

Q And that boat you sold?

(Testimony of Harry C. Wilson)

A I sold it in Santa Barbara.

Q Did you give them a bill of sale or did the Lake Union?

A The Lake Union.

Q Direct to the owners of the "Sea Vee"?

A Yes.

Q And you owed them \$4000?

A Yes, which we had collected for and had not remitted. So I sold these engines to them to balance that account.

Q Do you mean the engines in the "LUDDCO"?

A The two engines in this particular boat, and another engine in another boat that we owned. We owned these three engines.

Q How much were you to pay the Lake Union Dry Dock Company for the boat "LUDDCO 41"?

A That varied. The original deal, when the boat first came down here, we were supposed to pay them \$15,000 for the hull. And they subsequently sent us new concessions, new prices.

Q What was the second new price they sent you?

A They kept cutting on it until we finally bought the boat from them, including the motors, which we had sold, for \$12,500.

Q And was that motor that you put in this "LUDDCO 41" given as a credit on that \$12,500?

A No, given as a credit on our open account. It had nothing to do with the boat at all.

Q When did you buy it for \$12,500?

A After we came out of bankruptcy.

Q About what time?

(Testimony of Harry C. Wilson)

A In the summer of 1931.

Q In the summer of 1931?

A Yes.

Q You bought the "LUDDCO 41", is that right?

A That is right.

Q Prior to the time that you had the "LUDDCO"—or, prior to the time the boat went on the dry docks at the Wilmington Boat Works, did you ever state to the Wilmington Boat Works that the boat could not be held for a lien for the payment of any work done?

MR. BRONSON: Objected to as not proper cross-examination. There is no testimony from this witness about any conversation about holding the boat.

A I did not.

Q The Yacht & Motor Sales had possession of the boat, is that right?

A Yes.

Q That possession was delivered to them—the possession of the boat was delivered by the Lake Union Dry Docks; is that right?

A Yes.

Q And after it had been delivered in your possession, you endeavored to sell the boat?

A Yes.

Q Then you wanted certain work done on the boat and took it to the Wilmington Boat Works?

A That is right.

Q I might state that Mr. Carlson, the superintendent of the yards of the Wilmington Boat Works, in substance testified as follows yesterday—

(Testimony of Harry C. Wilson)

MR. BRONSON: (Interrupting) I object to the paraphrasing of any testimony here as improper. The record will show what the testimony was.

(Discussion was had between counsel off the record, and the reporter read part of the testimony of Mr. Carlson which was taken at the trial before the Special Master Head.)

Q BY MR. NIX: (Continuing) Mr. Wilson, Libelant's Exhibit No. 1 states that on the 10th day of September: "Rough—mab topsides, scrub bottom, and clean water line, 2-1/2 hours." I will show you Libelant's Exhibit No. 1 and ask you to go through that. You were presented a bill prior—you can see a copy of Libelant's Exhibit 1, you have seen that before, haven't you?

A Yes.

Q And you have inspected it, is that true?

A No, I have not.

Q Have you ever inspected the bill at all?

A No.

Q Will you kindly inspect the same now, please. Referring to Libelant's Exhibit No. 1, just take what time is necessary, if you will please, Mr. Wilson, and inspect the same.

A What do you want me to do?

Q Just inspect the entire statement and bill, and then I will ask you in reference to the same. Then, I will show you Claimant's Exhibit No. A, in other words, order No. 196, Yacht & Motor Sales Corporation. Other than that same reference occurring on Libelant's Exhibit

(Testimony of Harry C. Wilson)

No. 1, making and installing new struts as per agreement, \$200, do you note any duplication?

MR. BRONSON: I object to that. The witness testified he is not sufficiently qualified to identify the items themselves. The further objection to the question, the exhibit A has not been completely identified in the question, it reads: "Build new struts and line shafts. Install new bronze propeller shafts."

Q BY MR. NIX: Will you please answer the question, Mr. Wilson?

MR. BRONSON: Do you understand the question, Mr. Wilson?

A I don't think I am qualified to answer.

Q BY MR. NIX: You have inspected, you testified you saw a copy of the bill prior to the time just shown to you, didn't you?

A Yes.

Q Up until the time the libel was filed, you never protested with reference to the work done on the boat—

A No, I never protested.

Q —and charged according to the statement rendered, did you, Mr. Wilson?

A That is true. I intended to pay it in full.

Q Now, Mr. Wilson, did you have any sales agreement in writing with the Lake Union Dry Dock Company on this boat?

A No, we did not. Our agreements were verbal.

Q All verbal agreements?

A Yes.

Q You did not have—

(Testimony of Harry C. Wilson)

A (Interrupting) We had this much, we had a letter when the boat came down, stating what they would have to be paid net. Virtually, you might call it a statement or invoice. We actually had an invoice on the boat.

Q There was not a charter party or any bill of sale or anything like that?

A No.

Q It was just an invoice on the boat?

A I will explain that this is the way we used to do it. They would send us an invoice on the boat, showing the cost of the hull to us, and the lifting charges, the insurance for bringing it down, and we always paid for the freight, the transportation, in cash. In other words, we took consignment at Seattle.

Q You stated that you intended to pay the boat company. You have not at any time questioned the work being ordered done, either by yourself or by your representatives, as set forth in Libellant's Exhibit No. 1?

A You are referring to this requisition?

Q The requisition and the matters contained in this statement.

A I specifically ordered this requisition, and other work which I gave verbally to Mr. Carlson when the boat was hauled out.

MR. NIX: That is all.

REDIRECT EXAMINATION

BY MR. BRONSON:

Q That is what you testified to on direct?

A Yes.

(Testimony of Harry C. Wilson)

Q What the order called for?

A Yes.

Q Plus the cost of the shafts, the transom piping and the shifting of the water connections?

A Yes.

MR. NIX: Mr. Bronson, if you want me to go into each and every item—it is very apparent that you are trying to limit the witness with reference to your questions and the specific statement. My questions covered all of the work done, as set forth in Libelant's Exhibit 1, and I have shown the witness, Mr. Wilson, the same, and the order No. 196 of the Yacht & Motor Sales, for \$200, and your answer to that was—

MR. BRONSON: His answer to that was the answer he gave. The question was obviously misleading.

MR. NIX: It was not. If it was misleading, it was misleading on your part, and your part alone. I am not misleading him, I am putting before Mr. Wilson the entire statement for all services rendered, and I have asked him as to whether or not either he or his representatives ordered that work done, with his knowledge. Just let him answer my question and he will clarify it.

MR. BRONSON: My objection is that it was obviously misleading, because the witness has testified repeatedly that he was not qualified to identify the items in Exhibit 1. He has testified positively to the work he ordered done.

MR. NIX: And he testified positively that prior to the order 196 he ordered the other work done on a time and material basis, and that he fully intended to pay the entire amount of the bill as presented, and my question

(Testimony of Harry C. Wilson)

was that either he or his representatives ordered the work under order No. 196, and the other, the balance of the bill as set forth in Libellant's Exhibit 1 on a time and material basis, and he testified that he did. Is that correct?

MR. BRONSON: I object to that question as misleading again. He has answered the specific question.

RECROSS EXAMINATION

BY MR. NIX:

Q Will you answer my question, Mr. Wilson?

A You want to know what I ordered?

Q Mr. Wilson, you testified that you ordered certain work on the time and material basis, and I show you Libellant's Exhibit 1. That is, this complete statement which includes the item of \$200. You will notice.

A Yes.

Q I showed you the entire statement and you testified that you were going to pay that entire statement.

MR. BRONSON: Object to this as not proper. Let the witness testify what he testified to.

MR. NIX: I can call his attention to anything he testifies to. I can recall to him what he testified to, and I do not have to go back and ask him the direct question.

MR. BRONSON: We want the witness to testify, himself.

MR. NIX: I am calling his attention to what he testified to and that is my privilege, and I am entitled to that.

THE WITNESS: I will have to decline to analyze this bill, as being unqualified to analyze it. I will repeat

(Testimony of Harry C. Wilson)

that I gave instructions for this requisition, and I gave Harry Carlson instructions on other work on a time and material basis.

Q Other work to be time and material?

A Yes.

Q And then this bill, or a copy of this bill which is Libelant's Exhibit No. 1, was presented to your company?

A Yes, that is right.

Q And then you testified that your company intended to pay the same?

A Yes.

MR. NIX: That is all.

REDIRECT EXAMINATION

Q BY MR. BRONSON: Did you testify that you had ever examined this bill, Libelant's Exhibit 1 before?

A I never have.

Q You never have examined it before?

A No.

Q Is that correct?

A That is correct.

Q What was your understanding of the bill which you were going to pay, which you have just mentioned? Tell me what you thought you were going to pay for when you say you intended to pay the bill.

A I got a statement for \$713.00.

Q Was it itemized?

A Yes.

Q But you say that you did not examine the statement?

(Testimony of Harry C. Wilson)

A No, sir, I never examined it.

Q When did you get that bill, Mr. Wilson?

A About the time the company went into receivership.

Q The company was not then operating, not an operating company at that time?

A No.

Q Do you remember about what time you went into receivership?

A The 1st of November. I don't know exactly as to the date when the bill came in. As a matter of fact, I did not see it, it went to the bookkeeper first.

Q And the company was then in the hands of a receiver, was it?

A The company was in the hands of a receiver before I ever saw the bill.

Q And you intended to pay for the work which you have mentioned here, as ordered done on this boat?

A I promised to pay it.

Q You promised to pay for that work?

A Yes.

MR. NIX: That is wholly misleading. Do you mean the entire bill as presented, in the sum of \$713.83, or do you mean the \$200 item as set forth, or as referred to by the order No. 196, Mr. Bronson?

MR. BRONSON: I am interrogating the witness now.

Q BY MR. BRONSON: Let me ask you this question, Mr. Wilson; did you have any intention of paying the agreed price of \$200 for making and installing the shafts and installing the line shafts and the \$81 for the shafts themselves, and then again paying for that work on a time and material basis, in addition to the \$200?

[TITLE OF COURT AND CAUSE.]

MR. NIX: I object to that. It is not in evidence that that is a duplication. As a matter of fact, it is in evidence that that is separate and distinct.

Q BY MR. BRONSON: Will you answer the question now?

(Question read.)

A I don't understand the question.

Q Let me ask you again. The \$200 statement, order No. 196, Claimant's Exhibit A, was to cover all time and material for shaft work and the strut work, and what was necessary to complete that work, except the \$81 for the shafts, is that correct?

A That was my understanding, when I gave this order.

Q Now, did you, in addition to that, intend to pay for the same work on a time and material basis, in other words, pay twice for it?

A I never intended to pay twice on anything.

Q Some of this itemized list of time and material, which has been identified as Libelant's Exhibit No. 1, covers work on a time and material basis, going to put in these struts and put in the line shafts, the hauling of the boat out to do that, and the incidental work necessary to complete that job, did you or did you not intend to pay for that again as an itemized time and material job? Let me ask you the question this way, if you don't understand that. If the statement, Exhibit No. 1, Libelant's Exhibit No. 1, has in it time and material for building new struts and line shafts and installing new bronze propeller shafts, did you intend at any time to pay for

(Testimony of Harry C. Wilson)

such work, in addition to the \$200, or was it your understanding that \$200 was to cover the time and material going into that job, with the exception of the line shafts?

A Well, it had been my understanding that \$200 would cover that, cover all the labor of installation or both shafts and struts.

Q And the material on the struts?

A Yes.

Q That the job would be complete with the exception of the shafts, which were to be paid for separately?

A Yes, and extras.

Q That would be the transom work, and the pump connections?

A Yes, or any paint work or lettering or washing the boat, and ways, and things like that, would all be extras.

MR. BRONSON: Q That is all?

A I would expect to pay for any parts in connection with the shafts.

Q Integral parts of the shafts?

A Yes, whether it would be bronze or intermediates or any necessary flanges or key stock and things of that kind, would also be in addition to the labor.

MR. BRONSON: That is all.

RE-CROSS EXAMINATION

BY MR. NIX:

Q Mr. Carlson, do you recall ever having a conversation, discussing this bill prior to the time that the libel was filed, with Mr. Smith here?

A What is that?

(Testimony of Harry C. Wilson)

Q Didn't you discuss this bill, referring to Libelant's Exhibit 1, with Mr. Smith, before the libel was filed on the boat?

A The bill itself?

Q Yes.

A No, not in detail. Only as a total.

Q As a total?

A Yes. There were two accounts I had with him, one was a general account for miscellaneous items, and one was a specific account on this specific boat. And I told him I would pay the one account in full on the boat, if he would consent to be a general creditor on the other. That was my agreement.

MR. NIX: That is all.

MR. BRONSON: That is all. Will you stipulate, Mr. Nix, that the reading over and signing of this deposition by the witness is waived, and that the notary public may certify the same without the signature of the witness, and that the deposition shall have the same force and effect as if the witness has read over and signed the same in the presence of the notary?

MR. NIX: So stipulated. It is stipulated that the case is to be submitted upon the filing of this deposition, and that the deposition will be filed, and a copy of it delivered to claimant's attorney, by the 16th of April, and that briefs of both parties will be filed with the Special Master by the 26th of April, and that thereupon the same shall stand submitted.

MR. BRONSON: So stipulated.

(Signature waived.)

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[Endorsed]: Filed Apr 13 1932 R. S. Zimmerman,
Clerk By Theodore Hocke Deputy Clerk

[TITLE OF COURT AND CAUSE.]

NOTICE OF ASSOCIATION OF COUNSEL

TO: WILMINGTON BOAT WORKS, INC., a California corporation, Libelant; and

TO: LLOYD S. NIX, its Proctor:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned proctors for claimant have associated with them Messrs. McCutchen, Olney, Mannon & Greene, Attorneys at Law, with offices in the Roosevelt Building, Los Angeles, California, as associate counsel in the above entitled proceeding, and that hereafter service of all papers and proceedings, other than process, may be served upon claimant, Lake Union Dry Dock & Machine Works, a corporation, by leaving the same with said associate counsel, or by mailing to the undersigned, as heretofore.

Bronson, Jones & Bronson
Proctors for Claimant, Lake Union Dry
Dock & Machine Works

McCutchen Olney Mannon & Greene
Associate Counsel for Claimant,
Lake Union Dry Dock & Machine Works.

Service of the within Notice of Association of Counsel and receipt of a copy thereof admitted this 21 day of June, 1932.

Lloyd S Nix
by Lilian M Fish
Proctor for Libelant.

[Endorsed]: Filed Jun 21 1932 R. S. Zimmerman,
Clerk By C A Simmons Deputy Clerk

[TITLE OF COURT AND CAUSE.]

NOTICE OF APPEAL

TO: WILMINGTON BOAT WORKS, INC., a corporation, Libelant;

TO: LLOYD S. NIX, ESQ., its Proctor; and

TO: THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

NOTICE IS HEREBY GIVEN that claimant, Lake Union Dry Dock & Machine Works, a corporation, and Indemnity Insurance Company of North America, a corporation, stipulator for value in the above entitled proceeding, herewith and hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from that certain final decree heretofore entered in the above entitled proceeding on the 25th day of August, 1932, and from each and every part of said final decree.

Dated this 28th day of October, 1932.

Bronson, Jones & Bronson

McCutchen Olney Mannon & Greene

Proctors for Claimant, Lake Union Dry Dock & Machine Works.

[Endorsed]: Service of the within Notice of Appeal and receipt of a copy thereof admitted this 28th day of October, 1932. Lloyd S. Nix, Proctor for Libelant. Filed Oct 28 1932 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ASSIGNMENT OF ERRORS.

Come now appellants, Lake Union Dry Dock & Machine Works, and Indemnity Insurance Company of North America, and hereby assign the following errors in the proceedings and final decree of the District Court in the above entitled cause, as follows:

FIRST.

The Commissioner erred in concluding as follows:

“Subsection Q of the Ship Mortgage Act (Title 46 U. S. Code, Sec. 972) provides ‘The following persons shall be presumed to have authority from the owner to procure repairs - - - the managing owner, ship’s husband, master or any person to whom the *management* of the vessel at the port of supply is entrusted.’ There is no question but that the Yacht and Motor Sales Corporation came within this classification and that the furnishing of repairs upon its order raised the presumption of a lien.” (Italics ours.)

and the District Court erred in overruling claimant’s exception to such conclusion, confirming the same and entering decree in conformity therewith, for the reason that the said statute raises no more than a presumption of authority, and not a presumption of lien, and further the Yacht and Motor Sales Corporation, under the evidence, does not come within the classification of the statute, being neither the managing owner, nor the ship’s husband, nor the Master, nor any person to whom the *management* of the vessel was entrusted, but rather to the knowledge of the libellant being merely a broker or agent having possession of a new and non-operating vessel for the purpose of sale to a third person.

SECOND.

The Commissioner erred in concluding as follows:

“From the circumstances of the transaction it is concluded that there was nothing which should have put the libelant on inquiry. The libelant was acting with reasonable diligence although no inquiry was made. *Morse Dry Dock and Repair Co. vs. United States*, 298 Fed. 153.” and the District Court erred in overruling claimant’s exception to such conclusion, confirming the same and entering decree in conformity therewith, for the reason that under the statute and the law, the libelant was bound to inquire, and is chargeable with any knowledge which a reasonable inquiry would have elicited.

THIRD.

The Commissioner erred in concluding as follows:

“Going further there is no evidence of a specific agreement between the claimant and the Yacht and Motor Sales Corporation that the latter could create no liens. The agreement between the parties as to which was to bear the expense of repairs did not exclude the usual authority possessed by a person in possession of a vessel to use the credit of the vessel for its benefit. The agreement between the owner and the person in possession under charter or contract fixes their respective rights and obligations but is not binding upon third parties. *The Portland*, 273 Fed. 401. *The Anna E. Morse*, 286 Fed. 794.” and the District Court erred in overruling the claimant’s exception to such conclusion, confirming the same, and entering decree in conformity therewith, for the reason that the evidence clearly establishes, without contradiction, that the Yacht and Motor Sales Corporation had no authority from the claimant to create any liens against the vessel,

and no authority to make any use of the vessel even which would permit of the creation of any liens.

FOURTH.

The Commissioner erred in concluding as follows:

“It is concluded that the libelant has a good and valid lien against the respondent vessel.”

and the District Court erred in overruling claimant’s exception to such conclusion, confirming the same and entering decree in conformity therewith, for the reason, in addition to the foregoing, that the Yacht and Motor Sales Corporation had no authority to create any liens upon the vessel, and simple inquiry upon the part of the libelant would, so far as the record discloses, have disclosed this fact to the libelant.

FIFTH.

The Commissioner erred in recommending as follows:

“That a decree be entered in accordance with this report finding that the libelant has a good and valid lien against the respondent vessel in the amount of \$713.83 together with interest and the costs of this suit and that process issue for the sale of the respondent vessel in accordance with the rules.”

and the District Court erred in overruling claimant’s exception to such recommendation, confirming the same and entering decree in confirmity therewith, for the reasons hereinabove set forth in the foregoing assignments.

SIXTH.

The Commissioner and the District Court erred in failing and refusing to find, in part, the following facts, established by the evidence without contradiction, and in failing and refusing to enter decree accordingly:

I.

“That it was agreed that prior to September 10th, 1930, the claimant shipped respondent vessel to the Yacht and Motor Sales Corporation at Los Angeles Harbor, as consignee, for the sole purpose of sale; that it was agreed between the claimant and the said Yacht and Motor Sales Corporation as a part of said consignment agreement that the said Yacht and Motor Sales Corporation was to attend to the care and unkeep of said vessel at its own plant and at its own expense; that it was not contemplated by the said claimant and the said Yacht and Motor Sales Corporation that any repairs or alterations were to be made to said respondent vessel other than care and normal upkeep, and that it was expressly understood and agreed by the said defendants that said Yacht and Motor Sales Corporation had no authority to permit any liens to be incurred against said respondent vessel; that no reason is disclosed by the evidence why this lack of authority could not or would not have been made known to libelant in response to simple inquiry.”

II.

“That the work and repairs performed on said respondent vessel and the material furnished thereto was all without the knowledge or consent of the claimant, until after the completion thereof; that libelant looked solely to said Yacht and Motor Sales Corporation for payment of said labor, repairs and material until after the insolvency proceedings instituted against said Yacht and Motor Sales Corporation, and at no time intended to extend any credit to said respondent vessel.”

III.

“That libelant made no inquiry whatsoever as to the authority or lack of authority of the said Yacht and Motor Sales Corporation to permit any liens to be incurred against said respondent vessel; that the said Yacht and Motor Sales Corporation made no representations to libelant upon the subject of authority to permit liens to be incurred against said respondent vessel, and that from the evidence it must be concluded that inquiry by the libelant of said Yacht and Motor Sales Corporation would have disclosed that said Yacht and Motor Sales Corporation expressly had no authority to permit any liens to be incurred against said respondent vessel.”

for the reason that the above specified findings and conclusions, and none other, are supported by the evidence and the law applicable thereto.

SEVENTH.

The Commissioner and the District Court erred in failing and refusing to conclude as a matter of law, and to enter decree in conformity therewith, dismissing the libelant, viz.:

“That from the circumstances of the transaction between libelant and the said Yacht and Motor Sales Corporation, and from the uncontradicted evidence and the admissions of libelant in its answers to interrogatories, it is concluded that by reason of the express lack of authority of the Yacht and Motor Sales Corporation to permit any liens thereby created against respondent vessel, and by reason of the failure of libelant to use any diligence to ascertain this fact, and its failure to make any inquiry whatsoever, no lien was created against said respondent vessel in any respect in favor of said libelant, and it is concluded that libelant’s libel should be dismissed with costs to claimant.”

for the reason that no other conclusion is consonant with the facts and law of the case.

EIGHTH.

The District Court erred in entering decree in favor of the libelant and in failing and refusing to enter decree dismissing the libel, with costs to claimant, for the reasons hereinabove specifically set forth in the foregoing assignments.

Bronson, Jones & Bronson
McCutchen Olney Mannon & Greene
PROCTORS FOR claimant and APPELLANTS

[Endorsed]: Service of the within Assignment of Errors and receipt of a copy thereof admitted this 28th day of October, 1932. Lloyd S. Nix, Proctor for Libelant. Filed Oct. 28 1932 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

STIPULATION RE SUPERSEDEAS

IT IS HEREBY STIPULATED AND AGREED that the stipulation and bond for the release of the boat LUDDCO 41 in the amount of \$1500.00, with Indemnity Insurance Company of North America as surety thereon, may serve as a supersedeas, and that execution of the final decree herein may be stayed pending the final determination of the appeal from said final decree so long as said stipulation for the release of said vessel remains in full force and effect without the necessity of filing any additional bond.

Lloyd S Nix

Proctor for Libelant.

Bronson Jones & Bronson

McCutchen, Olney Mannon & Greene

Proctors for Claimant.

Dated October 28, 1932.

[Endorsed]: Filed Oct 28 1932 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ORDER CONCERNING ORIGINAL EXHIBITS

Pursuant to stipulation by and between the proctors for the respective parties hereto, IT IS ORDERED

That all original exhibits introduced in evidence herein by either party may be sent up and filed in the United States Circuit Court of Appeals for the Ninth Circuit in lieu of copies thereof.

Geo. Cosgrave

United States District Judge

Dated: October 28, 1932.

[Endorsed]: Filed Oct 31 1932 R. S. Zimmerman,
Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

STIPULATION RE APOSTLES ON APPEAL

IT IS HEREBY STIPULATED by and between the parties hereto, through their respective proctors under-signed, that in the preparation of the record and apostles on appeal in the above entitled proceeding, all formal captions and titles and verifications on the various papers and proceedings, except the title and caption upon the first paper thereof, may be omitted; and

IT IS FURTHER STIPULATED that all exhibits filed in the above entitled proceeding by either party may be sent up with the record on appeal, in lieu of copies thereof; and

IT IS FURTHER STIPULATED that as to the various depositions to be entered in the apostles, notices and certificates connected therewith may be omitted, and that it shall be sufficient to give the name of the witness and a copy of the interrogatories and answers, and to state the name of the Commissioner and the place where and when the deposition was sworn to, provided that the an-

swers shall be inserted immediately following the questions, as in the original deposition.

It is further stipulated that all oral testimony taken before the Commissioner, which has not been reduced to writing and filed herein, shall be omitted from the apostles on appeal.

Lloyd S Nix

Proctor for Libelant.

Bronson Jones & Bronson

McCutchen, Olney, Mannon & Greene

Proctors for Claimant.

Dated: October 28, 1932.

[Endorsed]: Filed Oct 28 1932 R. S. Zimmerman,
Clerk by Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

PRAECIPE FOR APOSTLES.

TO THE CLERK OF THE ABOVE ENTITLED
COURT:

Will you kindly prepare and certify a transcript of record in the above entitled proceedings to the United States Circuit Court of Appeals, for the Ninth Circuit, to comprise apostles on appeal consisting of the following:

1. The style of the court and names of the parties.
2. Original libel.
3. Claimant's stipulation for costs.
4. Claim of Lake Union Dry Dock & Machine Works.
5. Stipulation for value on release of vessel.
6. Answer of claimant Lake Union Dry Dock & Machine Works.
7. Interrogatories attached to answer of claimant.
8. Answer of libelant to said interrogatories.

9. Order of reference to Honorable David B. Head, Commissioner.
10. Report and return of Honorable David B. Head, Commissioner.
11. Exceptions of claimant to report and return of Honorable David B. Head, Commissioner.
12. Order overruling said exceptions and confirming findings and conclusions and report and return of said Commissioner.
13. Final decree.
14. Notice of entry of final decree.
15. Stipulation for costs on appeal.
16. Stipulation re supersedeas.
17. Stipulation re original exhibits and omissions from the record.
18. Order sending up original exhibits.
19. Notice of appeal.
20. Assignment of errors.
21. Notice of association of proctors for claimant.
22. Depositions of H. B. Jones, Otis Cutting, J. L. McLean and Harry C. Wilson.
23. Such parts of the testimony taken before the Commissioner as are written up and filed herein, pursuant to stipulation.
24. All exhibits filed in the above entitled proceeding.
25. This praecipe.

Bronson Jones & Bronson
McCutchen, Olney, Mannon & Greene
Proctors for Claimant.

[Endorsed]: Service of the within praecipe for apostles and receipt of a copy thereof admitted this 28 day of Oct, 1932 Joe Raycroft Filed Oct 28 1932 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 114 pages, numbered from 1 to 114 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the libel; stipulation regarding release of vessel; stipulation for costs of claimant; undertaking for release in libel; answer to libel in rem and claim; interrogatories attached to answer; answer to interrogatories; order of reference; commissioner's report; exceptions of claimant to report; order overruling exceptions and confirming findings and conclusions and report and return of said commissioner; final decree; notice of entry of final decree; reporter's transcript; depositions of H. B. Jones, Otis Cutting; J. L. McLean and Harry C. Wilson; notice of association of proctors for claimant; notice of appeal; assignment of errors; stipulation re supersedeas; order concerning original exhibits; stipulation re apostles on appeal; stipulation for costs on appeal; appeal bond for costs and praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to.....

and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of November, in the year of Our Lord One Thousand Nine Hundred and Thirty-two, and of our Independence the One Hundred and Fifty-seventh.

R. S. ZIMMERMAN,
Clerk of the District Court of the
United States of America, in
and for the Southern District
of California.

By

Deputy.